TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1[redacted]1921

No. [redacted]312

MINNA LOMBARD CRICHTON, APPELLANT,

vs.

MAGGIE L. WINGFIELD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 29, 1921.

(28,252)

(28,252)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 895.

MINNA LOMBARD CRICHTON, APPELLANT,

vs.

MAGGIE L. WINGFIELD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 19, 1921.

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1 *Bill in Equity.*

Filed Dec. 29, 1920.

In the District Court of the United States for the Southern District of New York.

In Equity.

No. 20196.

MINNA LOMBARD CRICHTON, Plaintiff,

v.

MAGGIE L. WINGFIELD, Defendant.

To the Honorable Judges of the District Court of the United States in and for the Southern District of New York:

The plaintiff by her solicitor, Thomas B. Felder, by this, her bill in equity, complains of the defendant, and alleges:

First. Plaintiff is a citizen of the State of New York, and a resident of said district in the County of Westchester therein. That the defendant is a citizen of the State of Mississippi, and a resident of the City of Clarksdale, County of Coahoma.

Second. That this suit is between citizens of different states. That the amount in controversy herein exceeds the sum of Three thousand ($3,000) dollars, exclusive of interest and costs.

Third. That the following is a copy of a certain principal note, to wit:

"$31,480 00.

Clarksdale, Miss., Jany. 1st, 1917.

On or before January 1st, 1921 after date, I promise to Pay to Eva W. & E. H. Lombard—or bearer, Thirty One Thousand Four Hundred Eighty and no 100 Dollars at the Bank of Clarksdale, Clarksdale, Miss. for value received negotiable, with exchange, with interest at Six per cent per annum from Maturity until paid, and all attorney's fees and expenses incurred in collection. Presentment, demand protest and notice of demand, protest and non-payment are hereby expressly waived by all parties hereto, as makers or endorsers.

W. D. CORLEY.

No. 4.

Principal."

2 Fourth. That the following is a copy of a certain interest note, to wit:

"$13,221.60

Clarksdale, Miss., Jany. 1", 1917.

On or before January 1st, 1921 after date, I promise to Pay to Eva W. & E. H. Lombard—or bearer, Thirteen Thousand Two Hundred Twenty One & 6/100 Dollars at the Bank of Clarksdale, Clarksdale, Miss. for value received negotiable, with exchange, with interest at Six per cent per annum from Maturity until paid, and all attorney's fees and expenses incurred in collection. Presentment, demand protest and notice of demand, protest and non-payment are hereby expressly waived by all parties hereto, as makers or endorsers.

W. D. CORLEY.

No. 4.
Interest."

Fifth. That there are six other principal notes, similar in form, numbered, respectively, 5 to 10, inclusive, and dated January 1st, 1917, and due each January 1st, from January 1st, 1922 to January 1st, 1927, inclusive, for Thirty-one thousand four hundred and eighty dollars ($31,480) each; and six other interest notes, similar in form, numbered, respectively, 5 to 10, inclusive, and dated January 1st, 1917, as follows:

No. 5	Due Jan. 1st,	1922	for	$11,332.80
No. 6	" " "	1923	"	9,444.00
No. 7	" " "	1924	"	7,555.20
No. 8	" " "	1925	"	5,666.40
No. 9	" " "	1926	"	3,777.60
No. 10	" " "	1927	"	1,888.80

Sixth. That said notes are now in the State of New York, said Southern District, in the County of Westchester.

Seventh. That plaintiff claims ownership of said notes under the Wills of her deceased mother and father, respectively.

Eighth. That shortly before the death of plaintiff's father, while he was in failing health, it is claimed by the defendant that he executed to her, the said defendant, a certain paper, a copy of which is hereto attached, marked "Exhibit A" assigning to her a one-half interest in all of said principal notes, Numbered 4 to 9, inclusive, and one-half of said interest notes Numbered 4 to 9, inclusive. Said notes are deferred payments on the sale of a plantation in the State
3 of Mississippi and were executed to the father and mother of the plaintiff, and are bearer notes.

Ninth. Plaintiff alleges that at the time the said alleged assignment was executed, her said father was of unsound mind, memory and understanding, and incapable of, and (did not sign or execute said alleged assignment, or if the same was signed by him, said

Ephraim H. Lombard) did not understand or know, and was not capable of understanding or knowing that he was executing or signing an assignment of his interest in the said principal and interest notes, and that he did not intend to sign or execute any such instrument assigning his said interest to the defendant; and at said time, and for a long time prior thereto, her said father was mentally incapable of attending to any business of any nature whatever, or of making any contracts of any sort, or executing any conveyances; and the plaintiff further alleges that the said alleged assignment was obtained by the defendant through undue influence exercised by the said defendant upon her said father, and was without any consideration, and was obtained by the said defendant while she had complete control and mastery over the mind of the said Ephraim H. Lombard, who, for a long time prior thereto, had been afflicted with a disease that made him mentally incapable, which disease started on or about July 1st, 1918, and lasted up to and including the date of his death, to wit, November 3rd, 1919; and at no time during said period did plaintiff's father recover his full mental capacity.

Tenth. Plaintiff charges that the defendant claims still to have and to hold the said alleged transfer of an undivided one-half interest in the said Corley notes, and a claim upon the same in derogation of plaintiff's unquestioned title to and ownership of said notes.

4 Eleventh. That one of said principal notes and one of said interest notes are each due on the first day of January, 1921, and plaintiff is informed and verily believes that the maker of the said notes will not pay the same to this plaintiff because of said alleged assignment, although plaintiff alleges that she is the legal and equitable holder and owner of said notes.

Twelfth. That plaintiff's dealings with the maker of said notes will be seriously impeaded and handicapped unless she is prepared to deliver said notes to him without complications or encumbrances, such as the pretended claim of the defendant will cause at the time they become due.

Thirteenth. Plaintiff charges that the assertion of said claim by the defendant operates as, and is a cloud upon the title of said plaintiff to said notes, and casts doubt and suspicion upon the same, and causes plaintiff irreparable injury, and defendant threatens to continue, and does continue to set up said claim to an interest in said notes adverse to this plaintiff.

Fourteenth. That because of the matters and things herein set forth, plaintiff is entitled to the intervention of this Honorable Court for the purpose of having said alleged transfer cancelled and set aside, and for naught held, and to cause the said defendant to be restrained and enjoined perpetually from asserting any rights or title or claim to or lien upon said notes, or any of them, by reason of said alleged transfer, or because of any reason whatsoever.

Fifteenth. That plaintiff invokes the aid of this Honorable Court to enable her to collect the said notes coming due on January 1st, 1921, and alleges that immediate and irreparable damage will result to plaintiff unless she can collect this money because she must pay the Federal Inheritance Tax on her father's estate at once, and a mortgage becoming due on land purchased by him in Florida, the second week in February, 1921; and the plaintiff herein now tenders and offers, should a proper order of the court so direct and provide, to deposit with this court the remainder of said notes, subject to the further order and direction of the said court, and especially as security for the return of one-half of the amount collected, should it eventually be decided by this court that the plaintiff is, or was not entitled to collect the two said notes due January 1st, 1921.

Wherefore, Plaintiff prays as follows, to wit:

A.

That the said defendant named in the caption hereof, to wit: The said Maggie L. Wingfield, be made a party defendant hereto, and that she be cited to appear herein in the manner and within the times required by law, and herein demur, lead to or answer this Bill in Equity according to the rules and order of this Honorable Court, but the oath of the said defendant to any answer she may file hereto is hereby expressly waived.

B.

That upon final hearing hereof, the aforementioned alleged transfer, a copy of which is filed herewith as "Exhibit A," be decreed to be cancelled and for naught held, as a cloud and shadow upon the title of plaintiff to the aforementioned notes, so executed as hereinbefore charged by the said W. D. Corley, and which said notes are now in the exclusive possession of the plaintiff within the territorial limits and jurisdiction of this Honorable Court.

C.

That defendant be perpetually enjoined from asserting any claim to or lien upon the above mentioned Corley notes, or any of them, by reason of the aforementioned alleged transfer "Exhibit A" as aforesaid, and that the said defendant be required to cancel and surrender up the said transfer as a cloud upon the title of the plaintiff to the said notes and to each and all of the same, and to all and every interest therein, and that she be perpetually restrained from ever hereafter asserting or maintaining any right or title to or claim in or lien upon the said notes or any of them, because of the said alleged transfer last aforesaid, or for any cause or reason whatsoever.

D.

That in the meantime, the said defendant be temporarily restrained and temporarily enjoined from interfering with the said plaintiff in the collection of the said notes which will mature on the first day of January, 1921, and such other notes as may mature before the final hearing of this cause, until the further orders of the court in the premises.

E.

That this Honorable Court provide, by proper order, for the collection by plaintiff of the principal note and interest note due January 1st, 1921.

F.

That this Honorable Court will enter a preliminary order herein directing the issue of a subpœna and service of process upon the said defendant, and requiring the said defendant to appear herein at any early day, and demur, plead to or answer this bill of complaint, or to make such other defense thereto as is authorized by law, and in default thereof, that a decree pro confesso, and final decree, be entered herein against the said defendant.

G.

That the plaintiff be granted such other, further and additional relief as to equity may seem meet.

And as in duty bound, plaintiff will ever pray, etc.

THOS. B. FELDER,
Solicitor for the Plaintiff.

Office & P. O. Address, 11 Wall Street, Borough of Manhattan, City of New York.

7 STATE OF NEW YORK,
County of New York,
Southern District of New York, ss:

This day personally appeared before me, the undersigned Notary Public, within and for the County and State aforesaid, duly authorized to administer and certify the taking and making of oaths, the above named Minna Lombard Crichton, plaintiff in the foregoing bill of complaint, who, being by me first duly sworn did depose and say that the several matters and things set forth and stated in the said bill of complaint to be true, are true as therein stated, and those stated on information and belief, she believes to be true as therein stated.

MINNA LOMBARD CRICHTON.

Sworn to before me this 29th day of December, 1920.

MEDORA GAUGGEL.

8 EXHIBIT A.

This indenture Made and entered into on this 1st day of August, 1919, by and between E. H. Lombard as party of the first part, and Mrs. M. L. Wingfield, as party of the second part, witnesseth:

That whereas, the said party of the first part is the owner of a one-half interest of all of those certain promissory notes mentioned and described in that certain deed of trust of the date of January 1st, 1917, given by W. D. Corley to W. D. Cutrer, Trustee, for E. H. Lombard and Eva W. Lombard and which said deed of trust is of record in Book Numbered E-5, at page 326, of the records of land mortgages and trust deeds in the office of the Chancery Clerk of Sunflower County, Mississippi, and,

Whereas, the said party of the first part desires to transfer, set over and assign his interest in a part of said notes to the said party of the second part,

Now therefore, for value received and for the love and affection of the party of the first part for the party of the second part, the said party of the first part hereby sells, transfers, sets-over and assigns to the said party of the second part, his undivided one-half interest in and to the following principal notes, more particularly described as follows, to-wit:

1 Note for $31,480.00 due on or before January 1, 1921,
1 Note for $31,480.00 due on or before January 1, 1922,
1 Note for $31,480.00 due on or before January 1, 1923,
1 Note for $31,480.00 due on or before January 1, 1924,
1 Note for $31,480.00 due on or before January 1, 1925, and
1 Note for $31,480.00 due on or before January 1, 1926,

and also the following interest notes, to-wit:

1 Note for $13,221.60 due January 1st, 1921,
1 Note for $11,322.80 due January 1st, 1922,
1 Note for $9,444.00 due January 1st, 1923,
1 Note for $7,555.20 due January 1st, 1924,
1 Note for $5,666.40 due January 1st, 1925, and
1 Note for $3,777.60 due January 1st, 1926,

9 all of said above mentioned notes, both principal and interest being mentioned in and secured by the said deed of trust above referred to, which is of record in Book E-5, at page 326 aforesaid, and reference to which said book and page is hereby made.

And the Chancery Clerk of Sunflower County, Mississippi, is hereby authorized, empowered and instructed to note on the margin of the record where said deed of trust is recorded that the assignment of said notes has been made as hereinabove provided for and this instrument will be his authority for so doing.

In testimony whereof, witness my signature on this the 1st day of August, 1919.

(Sgnd.) E. H. LOMBARD.

TATE OF MISSISSIPPI,
Coahoma County,
City of Clarksdale:

This day before me the undersigned authority within and for the id City, County and State, personally appeared E. H. Lombard, he above named Grantor, who acknowledged that he signed and elivered the above and foregoing instrument as his own act and deed nd on the day and year herein above mentioned and set forth.

Given under my hand and seal of office on this the 1st day of ugust, 1919.

(Sgnd.) N. B. SESSIONS,
Notary Public.

0 [Endorsed:] In Equity. No. 20-196. United States District Court, Southern District of New York. Minna Lombard richton, Plaintiff, vs. Maggie L. Wingfield, Defendant. Copy. ill in Equity. Thos. B. Felder, Solicitor for Plaintiff, Office and ost Office Address No. 14 Wall Street, Borough of Manhattan, New ork City.

1 *Restraining Order.*

Filed Dec. 29, 1920.

n the District Court of the United States for the Southern District of New York.

MINNA LOMBARD CRICHTON, Plaintiff,

vs.

MAGGIE L. WINGFIELD, Defendant.

Restraining Order.

The above styled cause having been submitted to the court on the pplication of the plaintiff, Minna Lombard Crichton, for a restrain- g order to be directed to the defendant Maggie L. Wingfield, straining the said defendant temporarily from interfering with the id plaintiff in the collection of those two certain notes executed by . D. Corley, under date of January 1st, 1917, in favor of E. H. ombard and Eva W. Lombard, one for the sum of $31,480.00, and e for the sum of $13,221.60, due and payable at the Bank of arksdale, Clarksdale, Mississippi, on January 1st, 1921, and the urt being thereof sufficiently advised and being of the opinion that e plaintiff is entitled to a temporary restraining order, restraining e said Maggie L. Wingfield, defendant as aforesaid, from inter- ring with the said plaintiff Minna Lombard Crichton, in the col- tion of said notes, and all other notes of like tenor and effect ma- ring on January 1st, 1922, and until otherwise ordered; it is there- on adjudged, ordered and decreed, that the said defendant, the said

Maggie L. Wingfield, be and she is hereby restrained from in any way interfering with the plaintiff in the collection of the said notes last aforesaid, maturing on January 1st, 1921, until othe wise ordered by the court, and that the said Minna Lombard Crichton be, and she is hereby authorized and empowered to receive the proceeds of said notes and surrender the same to the payor thereof, without any interference with the said payment on the part of the said Maggie L. Wingfield, or any person acting by, through or under her, or on her behalf.

12 And it is further ordered that the plaintiff, Minna Lombard Crichton, deposit with the Clerk of this court, on or before the 31st day of December, 1920, all of the remaining principal and interest notes recited and set forth in her bill in equity, as security for the repayment of one-half of the said principal and interest notes due January 1st, 1921, together with a bond in the sum of $5,000 in case this court should, at a later date, decide that the defendant is or was rightfully entitled to one-half of the said principal and interest notes due January 1st, 1921.

Adjudged, ordered and decreed on this the 29th day of December, A. D. 1920.

JNO. C. KNOX,
U. S. D. J.

On or before January 21st the defendant may if she may be so advised, apply to the court to vacate, modify or set aside the restraining order hereby granted.

Dec. 29, 1920.

JNO. C. KNOX,
U. S. D. J.

13 In the District Court of the United States for the Southern District of New York.

MINNA LOMBARD CRICHTON, Plaintiff,

v.

MAGGIE L. WINGFIELD, Defendant.

Order for Process.

Filed Dec. 29, 1920.

In the above styled cause it appearing to the court from the bill in equity filed herein, which is duly sworn to, that this is an action to quiet the title as between the plaintiff and defendant as to certain personal property mentioned and described in the said bill in equity, and that the said personal property is within the territorial limits of and jurisdiction of this court, and that the defendant Maggie L. Wingfield, is a resident citizen and inhabitant of the County of Coahoma, in the State of Mississippi, and of the Delta Division of the

Northern District of the State of Mississippi, for the holding of terms of court of the United States in the said State of Mississippi, and that the said defendant cannot be found in this district; and it further appearing to the court that the said defendant has not voluntarily entered her appearance to this bill in equity in this court; it is thereupon adjudged, ordered and decreed by the court that the said defendant, Maggie L. Wingfield, appear in this Honorable Court on the 21st day of January A. D. 1921, then and there to demur, plead to or answer this bill of complaint, or otherwise make defense thereto, or in default thereof, that a decree pro confesso will be rendered herein against her, and that this proceeding will thereafter proceed ex parte.

It is further adjudged, ordered and decreed by the court, that the Clerk of this court issue and deliver a certified copy of this order, and a certified copy of the bill of complaint filed herein, together with the subpœna duly issued and the Temporary Restraining
14 Order, to the United States Marshal for the Northern District of Mississippi, commanding him, the said Marshal, to serve the same upon the said defendant, Maggie L. Wingfield, and make known the contents of the said bill of complaint to her, the said defendant, and further commanding the said Marshal to make return of said process to this Honorable Court, as required by law.

Adjudged, ordered and decreed on this the 29th day of December, A. D. 1920.

JNO. C. KNOX,
U. S. D. J.

15 *Process.*

Dec. 29, 1921.

In the District Court of the United States for the Southern District of New York.

In Equity.

Mrs. MINNA LOMBARD CRICHTON, Individually and as Executrix of the Will of Ephraim H. Lombard, Deceased, Plaintiff,

vs.

Mrs. M. L. WINGFIELD, Defendant.

To the United States Marshal for the Northern District of the State of Mississippi:

You are hereby commanded to summon Mrs. M. L. Wingfield to appear before the District Court of the United States for the Southern District of New York, in ——, on the 21st day of January, A. D. 1921, then and there to answer the bill of complaint filed in said court against her by Mrs. Minna Lombard Crichton, a duly certified copy of which bill under my hand and seal, is attached hereto, as

a part of this process, and you are further commanded to inform the said Mrs. M. L. Wingfield, defendant, of the nature of said suit, by delivering to her, the said Mrs. M. L. Wingfield, at the time you deliver to her a copy of this process, the above mentioned certified copy of the bill of complaint in this cause. Herein you shall fail not.

Given under my hand and the seal of said court, at my office in ——, on this the 29" day of December, A. D. 1920.

ALEXANDER GILCHRIST,
Clerk of the District Court of the United States for the Southern District of New York.

16 *Præcipe.*

Filed Dec. 29th, 1920.

District Court of the United States for the Southern District of New York.

MINNA LOMBARD CRICHTON, Plaintiff,

against

MAGGIE L. WINGFIELD, Defendant.

To Alexander Gilchrist, Jr.,
Clerk United States District Court,
Southern District of New York:

You will please issue subpœna to the defendant in the above entitled action.

THOS. B. FELDER,
Solicitor for Plaintiff.

Office & P. O. Address 14 Wall Street, Borough of Manhattan, City of New York.

Dated, New York, December 29th, 1921.

17 *Subpœna.*

Filed Jan. 7, 1921.

The President of the United States of America to Maggie L. Wingfield, at Clarksdale, County of Coahoma, State of Mississippi, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by Minna Lombard Crichton and to further do and receive what the said Court shall have considered in this behalf; and this you are not to omit under the penalty on you of two hundred and fifty dollars ($250).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 29th day of December in the year one thousand nine hundred and twenty and of the Independence of the United States of America the one hundred and forty-fifth.

ALEX. GILCHRIST, JR.,
Clerk.

THOMAS B. FELDER,
Plaintiff's Solr.

The defendant is required to file her answer or other defense in the above cause in the Clerk's office of this Court, on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken pro confesso.

[SEAL.] ALEX. GILCHRIST, JR.,
Clerk.

18 *Marshal's Return.*

Filed Jan. 7th, 1921.

UNITED STATES OF AMERICA,
State of Mississippi,
Northern District:

The within process was received by me at my office in Clarksdale, Mississippi, December 31, 1920, and at the same time I received certain certified copies of a bill of complaint, order for process and restraining order from Alexander Gilcrist, Jr., Clerk of the United States District Court for the Southern District of the State of New York, and I forthwith executed the said process by exhibiting the original hereof to the defendant, Maggie L. Wingfield, at Clarksdale, Mississippi, and by delivering to and leaving with her a copy of this process.

And I also at the same said time delivered to and served upon the said defendant, Maggie L. Wingfield, certified copies of the other above mentioned papers which have hereinbefore been mentioned, by delivering to and leaving the same with her; copies of all of which said papers certified as aforesaid, and so delivered by me to the said defendant, Maggie L. Wingfield, are attached hereto and made a part of my return hereon.

I have further executed the within process by making the foregoing return of service thereon.

Given under my hand at my office in Clarksdale, in the Northern District of Mississippi, on this 31st day of December, A. D., 1920.

BRUCE ALENXANDER,
United States Marshal for the
Northern District of Mississippi,
By W. G. LANDERS,
Deputy United States Marshal.

19 *Notice of Motion and Notice of Special Appearance.*

Filed Jan. 21, 1921.

United States District Court, Southern District of New York.

Equity. E 20-196.

MINNA LOMBARD CRICHTON

against

MAGGIE L. WINGFIELD.

The defendant, claiming that this Court has no jurisdiction over this action and over her as defendant, hereby appears specially for the purpose of objecting to the exercise of jurisdiction herein by this Court and moves to quash the service of process attempted to be made upon her on the ground that she is a resident, citizen and inhabitant of the State of Mississippi, that the attempt to serve her in that State with process herein is without authority of law, and that this case is not one that comes within the provisions of Section 57 of the Federal Judicial Code.

Appearing specially as aforesaid she also moves to dismiss the bill of complaint herein on the ground that this Court has not acquired jurisdiction over her as defendant or over the subject-matter of this action, and that this case is not one that comes within the provisions of Section 57 of the Judicial Code so as to give this Court jurisdiction over the defendant or over the subject-matter of this action.

GUGGENHEIMER, UNTERMYER & MARSHALL,
120 *Broadway, New York City,*
Appearing Specially for the Defendant,
Maggie L. Wingfield, for the Purposes of
the Aforesaid Motions Only.

Dated, January 21, 1921.

20 [Endorsed] United States District Court, Southern District of New York. Minna Lombard Crichton, Plaintiff, against Maggie L. Wingfield, Defendant. Equity E 20-196. Copy. Special Appearance on Behalf of Defendant, and Motions. Guggenheimer, Untermyer & Marshall, Appearing Specially, 120 Broadway, Borough of Manhattan, City of New York.

21 *Notice of Motion and Affidavits.*

Served Jan. 31, 1921.

United States District Court, Southern District of New York.

In Equity.

E 20-196.

MINNA LOMBARD CRICHTON, Plaintiff,

against

MAGGIE L. WINGFIELD, Defendant.

SIR:

Notice is hereby given that the defendant, appearing specially for the purpose of this motion only, will move the Court at a session thereof to be held by Honorable John C. Knox, in the Court Room in the Woolworth Building, 233 Broadway, Borough of Manhattan, New York City, on the 8th day of February, 1921, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order quashing the service of process attempted to be made herein upon her, upon the ground that she is a resident, citizen and inhabitant of the State of Mississippi and that the attempt to serve her in that State with process herein is without authority of law, and that this case is not one that comes within the provisions of Section 57 of the Federal Judicial Code; and also for the dismissal of the bill of complaint herein on the ground that this Court has not acquired jurisdiction over the defendant or over the subject-matter of this action, in that this case is not one that comes within the provisions of Section 57 of the Judicial Code or of any statute establishing the jurisdiction of this Court. Said motion will be made upon all of the proceedings herein and upon the annexed affidavits and exhibits hereto attached.

Dated, New York, January 28, 1921.

Yours, &c.,

GUGGENHEIMER, UNTERMYER & MARSHALL,
120 *Broadway, New York City,*
Appearing Specially for the Defendant,
Maggie L. Wingfield, for the Purpose of
the Aforesaid Motion Only.

To Thomas B. Felder, Esq., Solicitor for Plaintiff, 14 Wall Street, New York City.

22 United States District Court, Southern District of New York.

In Equity.

E 20-196.

MINNA LOMBARD CRICHTON, Plaintiff,

against

MAGGIE L. WINGFIELD, Defendant.

UNITED STATES OF AMERICA,
City and County of New York, ss:

Raphael Brill, being duly sworn, deposes and says:

I am the managing clerk of the firm of Guggenheimer, Untermyer & Marshall, who have appeared specially herein for the defendant, Maggie L. Wingfield, for the purpose only of moving to quash the service of process attempted to be made upon the defendant herein and for the dismissal of the bill of complaint, on the ground that this Court has not acquired jurisdiction over the defendant or over the subject-matter of this action.

As appears from the exhibits hereto annexed and from the bill of complaint filed herein on December 29, 1920, the defendant is a citizen of the State of Mississippi and a resident of the City of Clarksdale in the County of Coahoma in that State. The plaintiff is a citizen of the State of New York and a resident in the County of Westchester in said State. No process has been served upon the defendant herein within this State, but pursuant to an order granted herein on December 29, 1920, a certified copy of the bill of complaint herein, together with a subpœna, has been sent to the United States Marshal for the Northern District of Mississippi, commanding him to serve such subpœna and the bill of complaint herein upon the defendant in said State of Mississippi. As I am informed
23 and verily believe such service is the only service that has been made or attempted to be made on said defendant.

The action purports to be brought for the cancellation, as an alleged cloud upon the title of the plaintiff to certain promissory notes referred to in the bill of complaint, of an assignment of said notes made by E. H. Lombard, the plaintiff's father, on August 1, 1919, to the defendant, a sister of the said Lombard, and to enjoin the defendant from asserting any claim to or lien upon these notes or any of them by reason of such assignment, and that she be required to cancel and surrender said assignment to the plaintiff and be perpetually restrained from ever hereafter asserting or maintaining any right or title to or claim in or lien upon said notes or any of them.

A restraining order was granted herein by Honorable John C. Knox, United States District Judge for the Southern District of New York, on December 29, 1920, which enjoined the defendant

from interfering with the plaintiff in the collection of the aforesaid notes until otherwise ordered by the Court. In said order it is directed that the plaintiff deposit with the Clerk of this Court on or before December 31, 1920, all of the notes described in the bill of complaint. I am informed that the said notes have been so deposited, and it is requested that on the argument of the aforesaid motions said notes be brought into Court for inspection and as exhibits to be used by the defendant in support of this motion.

The aforesaid notes which are the subject-matter of this action were, with six others which, as I am informed, have been paid, executed and delivered by one W. D. Corley on or about January 1, 1917, and are dated on that day, and were made payable to Eva W. and E. H. Lombard. Six of the unpaid notes, each being given for the sum of $31,480, are by their terms payable respectively on
21 or before January 1, 1922, January 1, 1923, January 1, 1924, January 1, 1925, January 1, 1926, and January 1, 1927. Six additional notes, representing interest at the rate of six per cent per annum from maturity, likewise payable to Eva W. and E. H. Lombard and bearing date January 1, 1917, are for the following sums:

Note payable January 1, 1922, for $11,332.80.
Note payable January 1, 1923, for $9,444.00.
Note payable January 1, 1924, for $7,555.20.
Note payable January 1, 1925, for $5,666.40.
Note payable January 1, 1926, for $3,777.60.
Note payable January 1, 1927, for $1,888.80.

E. H. Lombard and Eva W. Lombard, the payees of said notes, resided at Clarksdale, in the State of Mississippi, and were citizens of that State.

A deed of trust was executed by W. D. Corley, the maker of the said notes, on January 1, 1917, to W. T. Cutrer, as trustee, party of the second part, and E. H. Lombard and Eva W. Lombard, parties of the third part, whereby the said Corley granted, bargained, sold, conveyed and especially warranted unto the said Cutrer, as trustee, and unto his successor or successors in trust, certain described parcels of real estate located in the County of Sunflower, State of Mississippi, said conveyance being made in trust for the faithful performance of the stipulations of said instrument and the payment of the aforesaid notes therein described according to the terms of said deed of trust. A duly certified copy of the deed of trust is hereto annexed, marked Exhibit H. The said instrument was duly recorded in the office of the Clerk of Sunflower County, Mississippi, on January 15, 1918.

25 It appears from the affidavit of Ed Brewer, hereto annexed marked Exhibit G, that said Corley, the maker of the said notes and the grantor of said deed of trust, sold the lands secured by said deed of trust to M. P. Sturdivant and J. A. May, who assumed the payment of the notes secured by said instrument, both being residents and citizens of the State of Mississippi; and thereafter the lands set forth in said trust deed were conveyed to J. W.

Cutrer, Oscar Johnston, Oscar Carr and W. A. Ritchie, who are residents and citizens of the Second Judicial District of Coahoma County, Mississippi, and who likewise assumed the payment of the aforesaid notes.

W. T. Cutrer, the trustee named in said deed of trust, in his lifetime was a resident and citizen of the Second Judicial District of Coahoma County, Mississippi.

The original maker of the aforesaid notes and the grantor under said deed of trust, W. D. Corley, is now a resident and citizen of the State of Colorado.

As shown by Exhibit E hereto annexed, Eva W. Lombard, one of the payees of the said notes and the mother of the plaintiff herein, died on May 25, 1919, a citizen and resident of the County of Coahoma, Mississippi, leaving a last will and testament in which the plaintiff herein was named as executrix. Said will was admitted to probate by the Chancellor of the Seventh Chancery Court District of Mississippi, the proceedings with regard to such probate being set forth in said Exhibit E.

After the death of Eva W. Lombard and the probate of her will the plaintiff qualified as executrix thereunder and entered upon the performance of her duties as such executrix, as shown by the aforesaid Exhibit E.

Annexed hereto is an affidavit of the Honorable Earl Brewer, a former Governor of the State of Mississippi, which was veri-
26 fied on January 18, 1921, before the Chancery Clerk of Coahoma County, Mississippi, in which he refers to transactions between him, the plaintiff and her father, E. H. Lombard.

Subsequent to the events referred to in said affidavit the said E. H. Lombard executed the assignment to the defendant referred to in the bill of complaint herein, a copy of which is annexed thereto, said assignment being dated August 1, 1919, and being acknowledged on that day.

On August 12, 1919, the said E. H. Lombard executed a last will and testament wherein he appointed the plaintiff to be the executrix thereof.

Shortly thereafter and on November 3, 1919, the said E. H. Lombard died, and the plaintiff propounded the said will for probate in the Chancery Court for the Seventh Chancery Court District of Mississippi. Thereafter said will was duly admitted to probate, the witnesses thereto testifying that the testator was at the time of the execution thereof on August 12, 1919, of sound and disposing mind and memory, and the Chancellor adjudged that to be the fact. The plaintiff thereupon qualified as executrix, all the proceedings with regard to the probate of said will and the issuance of letters testamentary to and the qualification of the plaintiff as executrix being set forth in Exhibit A hereto annexed.

Exhibit D, which is annexed hereto, is a sworn copy of Section 2102 of the Code of Laws of Mississippi adopted by the Legislature of the State in 1906, which, among other things, provides that an executor or administrator shall not remove any of the property of the estate out of the State of Mississippi.

Exhibit B hereto annexed is a certificate duly executed by the Judge of the Chancery Court of the Second Judicial District
27 of Coahoma County, Mississippi, which shows that the plaintiff has never received permission, either in her capacity as executrix of the estate of E. H. Lombard or as executrix of the estate of Eva W. Lombard, from said Court, which has jurisdiction over the estates of E. H. Lombard and Eva W. Lombard, deceased, either in term or in vacation, or from the Judge of said Court, to remove any of the property of either of the said estates out of Mississippi, nor has any other person been granted permission to remove the same out of such State; that the respective estates of E. H. Lombard and Eva W. Lombard have not been wound up and no final account or order has been filed with respect to either of said estates; that the executrix of said several estates, the plaintiff herein, has not applied for discharge and has not been discharged, and that the said proceedings are now open and unsettled in said Chancery Court.

No ancillary letters of administration on the estate of E. H. Lombard have been issued by the Surrogate's Court of Westchester County, as shown by Exhibit F hereto annexed.

RAPHAEL BRILL.

Subscribed and sworn to before me this 29th day of January, 1921.

[SEAL.] SIMON CROSS,
Notary Public Bronx Co., No. 86.

Bronx Register No. 2205 A.
Certificate filed New York County No. 486.
New York Register No. 2418.

28 EXHIBIT "A."

In the Chancery Court of the Second District of Coahoma County, Mississippi.

In re Estate of EPHRIAM H. LOMBARD, Deceased.

Petition for Probate of Will.

To the Honorable Chancery Court of the Seventh Chancery Court District of the State of Mississippi:

Your petitioner, Minna Ethel Crichton, respectfully represents that on the 3rd day of November, A. D. 1919, Ephraim H. Lombard, late of the Second District of Coahoma County, Mississippi, departed this life, leaving a last will and testament duly signed, published and attested, as your petitioner believes, and which she, in pursuance of the statute, herewith presents to your Honor for probate.

That said will is subscribed by James W. Gray, Jr., S. G. Salter and J. D. Boyd, as witnesses to the signature and publication thereof,

all of whom, as your petitioner knows, reside in the County of Coahoma, in said state of Mississippi.

That said testator, in his last will and testament, nominated and appointed your petitioner to be the executrix thereof. That your petitioner is the sole surviving child of the said decedent, and his sole surviving heir at law, the late wife of the said decedent, Mrs. Eva W. Lombard, having departed this life on or about the 25th day of May, A. D. 1919, and that the said decedent left no other child or children, or descendants of child or children save and except your petitioner.

And your petitioner further shows that the said Ephraim H. Lombard, died seized and possessed of real and personal property, consisting chiefly of an estate in lands, all of which are situated and lying in Bronxville, City of Yonkers, State of New York, and in Florida, and that so far as your petitioner knows the said testator did not, at the time of his death, own any lands situated elsewhere than as above stated, and that the said lands are devised by the said last will and testament.

Your petitioner further represents that according to the best information which your petitioner has been able to obtain, the said personal estate of said testator, is worth $25,000.00 and over.

That your petitioner moved by a desire of meeting and fulfilling the wishes of the said testator, and that his last will and testament may be, in all things, executed according to the true intent and meaning thereof, is willing to accept and undertake the office and trust therein confided to her.

In consideration whereof, and to the end that the said will and testament may be performed as aforesaid, your petitioner prays that the said James W. Gray, Jr., S. G. Salter and J. D. Boyd, subscribing witnesses as aforesaid, may be summoned to appear and be before this court forthwith, then and there, and otherwise as provided by law, to testify in the matter of the said will, as it may please your Honor to direct; and that probate of said will may thereupon be granted, and the same ordered for record.

And your petitioner prays further, that it may please your Honor, to grant her letters testamentary of said last will and testament, on her taking the oath prescribed by the statute, without entering into bond, the same having been expressly waived by the terms and provisions of the said last will and testament.

And your petitioner, as in duty bound, will ever pray.

MINNA ETHEL CRICHTON.

Sworn to and subscribed before me this the 6th day of November, A. D. 1919.

[SEAL.] E. F. WHITTINGTON,
Notary Public.

On the back appears the following: #2489. In re Estate of E. H. Lombard, Decd. Petition for Probate of Will. Filed Nov. 6, 1919. Y. E. Howell, Clerk. Recorded Nov. 6, 1919, Book 1, Page 83. Y. E. Howell, Clerk.

30 In the Chancery Court of the Second District of Coahoma County, Mississippi.

In re Estate of EPHRAIM H. LOMBARD, Deceased.

Order on Petition of Minna Ethel Crichton for Probate of Will and the Grant of Letters Testamentary.

This cause came on this day in open court to be heard upon the petition of Minna Ethel Crichton, duly verified for the probate of a certain instrument of writing purporting and alleged to be the true and only last will and testament of Ephraim H. Lombard, deceased, late a resident of the Second District of Coahoma County, Mississippi, and for letters testamentary thereupon; and upon taking and reading the testimony of James W. Gray, Jr., S. G. Salter and J. D. Boyd, subscribing witnesses thereto, and the court after hearing all and singular the proofs and allegations adduced, attested to and submitted, and having maturely considered the same, and being now satisfied that the said instrument is fully and legally established as the true and only last will and testament of the said Ephraim H. Lombard, deceased and that the said decedent was at the time of his death, a resident of the Second District of Coahoma County, Mississippi, and that the personal property bequeathed and devised by the said last will and testament, is located in the said Second District of Coahoma County, Mississippi, the place of residence of the said decedent at the time of his death, and that the lands devised by the said last will and testament are situated in Bronxville, in the City of Yonkers, in the State of New York, and in Florida; and that the said Ephraim H. Lombard, was on the day of the date of said will, to wit: On the 12th day of August, 1919, of lawful age to devise, and of sound and disposing mind, memory and understanding, and of right and in law entitled to make said Will:

It is thereupon considered, ordered, adjudged, and decreed that the said instrument of writing last aforesaid, adduced, proved and submitted by the said Minna Ethel Crichton, is hereby established as the true and original last will and testament of the said
31 Ephraim H. Lombard, deceased, and that the said instrument of writing of date August 12th, 1919, be admitted to probate and recorded as the true and original only last will and testament of the said Ephraim H. Lombard, deceased.

It is further considered, ordered, adjudged and decreed that letters testamentary of the said last will and testament, be granted to the said Minna Ethel Crichton, in accordance with the petition on file herein, and upon her taking the oath prescribed by the statute, and that she be relieved from executing any bond for the faithful discharge of her duties as executrix, the execution of any bond or security by her as such executrix, having been expressly waived by the provisions of the said last will and testament, and that the said Minna Ethel Crichton, as executrix as aforesaid, shall be relieved from the necessity and requirement to report her acts as executrix,

the necessity for such report having been expressly waived likewise by the provisions of the said last will and testament.

Adjudged, ordered and decreed in open court, on this the 6th day of November, A. D. 1919.

W. F. GEE,
Chancellor.

On the back appears the following: No. 2489. In re Estate of Ephraim H. Lombard, Deceased. Order admitting will to Probate and granting letters.

32 #2489.

THE STATE OF MISSISSIPPI,
Coahoma County, ss:

By the Chancery Court of said County.

Whereas, Ephraim H. Lombard deceased, late of said County, made in his lifetime his last Will and Testament, which on the 6th day of November in the year of our Lord one thousand nine hundred and nineteen was proved, approved and admitted to record in said Court, and probate thereof granted to Minna Ethel Crichton, the Executrix thereof and therein appointed executrix without necessity of giving bond and the said Minna Ethel Crichton having complied with the provisions of the statute in such cases made and provided.

Therefore, To the intent that the said will may be well and truly performed, we do give, grant and commit unto the said Minna Ethel Crichton the administration of all and singular the goods and chattels, rights and credits, of and belonging to the estate of said testator, with full power to take the same unto her hands and possession, and to ask, levy, recover and receive the same, wherever they may be in this State; to well and truly administer the said goods and chattels, rights and credits, according to law; and to make a just and true account of her actings and doings therein, when thereto required by our said Court; and to well and truly pay and deliver all the legacies contained and specified in the said will so far as the said goods and chattels, rights and credits will extend and the law charges her, hereby confirming the said executrix with full and ample authority to dispose of all and singular the said goods and chattels, rights and credits according to the tenor of said last Will and Testament, and the true intent and meaning of the said testator, by virtue of these presents.

Witness, the Honorable W. F. Gee, Chancellor of the 7th District, this 6th day of November, A. D. 1919, and the seal of said Court hereunto affixed.

Y. E. HOWELL,
Clerk.

On the back appears the following: File No. 2489. State of Mississippi, Coahoma County, Chancery Court. Minna Ethel Crichton, Executrix Est. of Ephraim H. Lombard, Dcd. Letters Testamentary. Filed Nov. 6, 1919. Recorded Book 1, page 92. Y. E. Howell, Clerk.

33 *The Last Will and Testament of E. H. Lombard.*

I, E. H. Lombard, mindful of the uncertainty of life, and the certainty of death, hereby revoking all other wills and codicils heretofore written or spoken by me, do make, publish and declare this to be my only true last will and testament, to-wit:

Item First. I desire all my just debts to be paid, provided they are probated and allowed within the time and in the manner required by law.

Item Second. I give and bequeath to my sister, Mrs. Maggie L. Wingfield, the sum of ten thousand dollars, and desire my executrix to pay the same to her as soon after my death as sufficient funds shall come into her hands.

Item Third. All the rest and residue of my estate of all kinds, real, personal and mixed, money and choses in action, I give, devise and bequeath to my daughter Minna Ethel Crichton, to be hers, and to be held by her, in her own right forever.

Item Fourth. I hereby nominate, constitute and appoint my said daughter Minna Ethel Crichton, to be the executrix of this my last will and testament, and direct that she shall not be required to give any bond or security as such, and that she shall not be required to report or account as such, to any court whatsoever.

In witness whereof, I have hereunto set my hand, this twelfth day of August, A. D. 1919.

E. H. LOMBARD

Signed, published and declared by E. H. Lombard in our presence and in the presence of each of us as witnesses thereto on August 12th, 1919.

S. G. SALTER.
J. D. BOYD.
J. W. GRAY, Jr.

34 *Proof of Will.*

In the Chancery Court of the Second District of Coahoma County, Mississippi.

In the Matter of the Last Will and Testament of EPHRAIM H. LOMBARD, Late of the Second District of Coahoma County, Mississippi, Deceased.

This day personally appeared before me, E. F. Whittington, the undersigned Notary Public, for the City of Clarksdale, in the County and State aforesaid, the undersigned James W. Gray, Jr., S. G. Salter and J. D. Boyd, subscribing witnesses to a certain instrument of writing purporting to be the last will and testament of Ephraim H. Lom-

bard, deceased, late of the Second District of Coahoma County, Mississippi, bearing date the 12th day of August, A. D. 1918, who having severally been by me first duly sworn, did severally depose and say: That the said Ephraim H. Lombard, signed, sealed, published and declared the said instrument as his last will and testament in the presence of these deponents, the said James W. Gray, Jr., S. G. Salter and J. D. Boyd and in the presence of each of them, on the day of the date thereof, towit: on the 12th day of August, A. D. 1919, and that they, the said deponents, signed the said instrument in the presence of the said Ephraim H. Lombard. That the said testator was then of sound and disposing mind and memory, and more than twenty-one years of age, and that these deponents each and all subscribed said instrument as witnesses thereto, at the instance and request, and in the presence of him, the said Ephraim H. Lombard, the said testator, and also in the presence of each other, on the day and year aforesaid, towit: on the 12th day of August, A. D. 1919.

J. W. GRAY, Jr.
S. G. SALTER.
J. D. BOYD.

Sworn to and subscribed before me this the 6th day of November, A. D. 1919.

[SEAL.] E. F. WHITTINGTON,
Notary Public.

Filed for record and admitted to probate November 6th, 1919. Recorded November 6th, 1919.

Y. E. HOWELL,
Clerk.

35 In the Chancery Court of the Second District of Coahoma County, Mississippi.

#2489.

In re Estate of EPHRAIM H. LOMBARD, Deceased.

STATE OF MISSISSIPPI,
Coahoma County:

This day personally appeared before me, E. F. Whittington, the undersigned Notary Public for the City of Clarksdale, in the County and State aforesaid, the undersigned Minna Ethel Crichton, who thereupon made and subscribed the following oath, as executrix of the will of Ephraim H. Lombard, deceased, to-wit: I do swear that the writing exhibited by me is the true last will and testament of Ephraim H. Lombard, as far as I know and believe, and that as executrix thereof, will well and truly execute the same according to its tenor and discharge the duties required by law.

MINNA ETHEL CRICHTON.

Sworn to and subscribed before me this the 6th day of November, 1919.

[SEAL.] E. F. WHITTINGTON,
Notary Public.

36 *Certificate of Clerk.*

I, Y. E. Howell, Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, duly elected, qualified and acting, and as such Clerk having in my charge, care and keeping all of the records of the Chancery Court of the said Second Judicial District of Coahoma County, Mississippi, hereby certify that there was filed in my office on the 6th day of November, 1919, in the cause of "Estate of Ephraim H. Lombard vs. Minna Ethel Lombard, Executrix," numbered 2489 of the Docket of the Said Chancery Court in my office, a petition by Minna Ethel Crichton for the probate of the last will and testament of Ephraim H. Lombard, deceased, and that pages 1 and 2 hereto attached constitute a true and correct copy and exemplification of the said petition as it now appears on file in my office; and I further certify that pages 3 and 4 hereto attached constitute a true and correct copy and exemplification of the order of the Court on said petition and that said order is now on file in my office and is of record in Book 5 at page 305 of the records in my office; and I further certify that page 6 hereto attached is a true and correct copy and exemplification of the last will and testament of Ephraim H. Lombard, deceased, the original of which said last will and testament is on file in this office and is of record in Will Book No. 2 at page 62 of the records of will books on file in my office; and I further certify that page 7 hereto attached constitutes a true and correct copy and exemplification of the proof of the last will and testament of the said Ephraim H. Lombard, deceased, which said proof is of record in Will Book 2 at page 62; and I further certify that page 5 hereto attached constitutes a true and correct copy and exemplification of the letters testamentary issued by the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, the original of which said letters testamentary is now on file in my office and is of record in Book 1 at page 92 of the records of letters
37 testamentary in my office. And I further certify that page 8 hereto attached is a true and correct copy of the affidavit of Minna Ethel Crichton as the Executrix of the last will and testament of Ephraim H. Lombard, deceased, and is of record in Book 1 at page 86.

And I further certify that the papers above referred to and mentioned are all papers and the only papers filed in connection with said cause numbered 2489 and that no other papers, orders petitions or decrees have been filed in this office which in any wise relate to the said cause except as shown herein.

Given under my hand and seal of office on this the 13th day of January, 1921.

[SEAL.] Y. E. HOWELL,
Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi.

STATE OF MISSISSIPPI.
Coahoma County:

I, G. Edward Williams, Judge of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, do hereby certify that Y. E. Howell, whose name is signed to the preceding certificate of exemplification, is the Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, duly elected, qualified, acting and sworn, and that as such Clerk he has in his charge, care and keeping all of the records of every kind, nature and description of the said Chancery Court in said District, County and State. And I further certify that the seal affixed to such exemplification is the seal of said Chancery Court and that the attestation thereof is in due form of law.

This the 13th day of January, 1921.

[SEAL.] G. EDW. WILLIAMS,
Judge of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi.

38 I, Y. E. Howell, Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, do hereby certify that G. Edward Williams, whose name is signed to the foregoing certificate, is the Judge of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, duly elected, qualified, acting and sworn, and that the signature of the said Judge is genuine.

In witness whereof I have hereunto set my hand and affixed seal of said Court, this the 13th day of January, 1921.

[SEAL.] Y. E. HOWELL,
Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi.

39 EXHIBIT "B."

In the Chancery Court of the Second Judicial District of Coahoma County, State of Mississippi, in Vacation.

In the Matter of the Estate of EPHRIAM H. LOMBARD, Deceased, Being Cause Number 2489 on the Docket of the Chancery Court of said Second Judicial District of Coahoma County, State of Mississippi, and also in the Matter of the Estate of EVA W. LOMBARD, Deceased, said Cause Being Number 2382 on the Docket of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi.

I, G. Edward Williams, Judge of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, hereby certify that neither Minna Ethel Lombard Crichton, Executrix of the estate of Ephraim H. Lombard, Deceased, and Executrix of the estate of Eva W. Lombard, Deceased, has ever received permission

from this Court either in term or in vacation or from me as Judge of the said Court, nor has any other person been granted permission to remove any of the property of either of the estates out of Mississippi.

And I hereby certify further that the estate of Ephriam H. Lombard, deceased, being numbered 2489 and the estate of Eva W. Lombard, deceased, being numbered 2382 on the Chancery docket of the Second Judicial District of Coahoma County, Mississippi, have not been wound up and no final accounting or order has been filed in either of said causes and that the Executrix of said estates, who is Minna Ethel Lombard Crichton, has not applied for discharge
40 and has not been discharged, and that said causes are now open and unsettled in the said Chancery Court.

This certificate is hereby executed and issued in duplicate and Y. E. Howell, Clerk of the Chancery Court of the said Second Judicial District of Coahoma County, Mississippi is instructed to file one copy in cause #2489, being the estate of Ephriam H. Lombard, and one copy in cause #2382, being the estate of Eva W. Lombard, deceased.

Done at Clarksdale, Mississippi, this the 17th day of January, 1921.

[SEAL.] G. EDW. WILLIAMS,
Judge of the Chancery Court, Second Judicial District of Coahoma County, Mississippi.

41 STATE OF MISSISSIPPI,
Coahoma County,
Second Judicial District:

I, Y. E. Howell, Clerk of the Chancery Court in the Second Judicial District of Coahoma County, Mississippi in and for said State, County and District, duly elected, qualified and acting, do hereby certify that the foregoing pages 1 and 2 contain a full, true and correct copy and exemplification of a certificate by G. Edward Williams, Judge of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, filed on the 17th day of January, 1921 in the cause of the estate of Ephriam H. Lombard, deceased, vs. Minna Ethel Lombard Crichton, executrix, said cause being numbered 2489 on the docket of the Chancery Court of Coahoma County, Mississippi, and also in the cause of the estate of Eva W. Lombard, deceased vs. Minna Ethel Lombard Crichton, executrix, said cause being numbered 2382 on the docket of the Chancery Court of the said Second Judicial District of Coahoma County, Mississippi, the originals of which said certificate are now on file in my office.

Witness my hand and seal of said Court, this the 17th day of January, 1921.

[SEAL.] Y. E. HOWELL,
Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi.

42 STATE OF MISSISSIPPI,
Coahoma County,
Second Judicial District:

I, G. Edward Williams, Judge of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, duly elected, qualified and acting, do hereby certify that Y. E. Howell, whose name is signed to the preceding certificate of exemplication is the Chancery Clerk of the Chancery Court of the said Second Judicial District of Coahoma County, Mississippi, duly elected and sworn, and that as the Clerk, he has in his care and keeping all of the records, files and papers of the Chancery Court of said District, County and State and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said Chancery Court of said District, County and State, and that the attestation thereof is in due form of law.

Given under my hand this the 17th day of January, 1921.

G. EDW. WILLIAMS,
Judge of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi.

STATE OF MISSISSIPPI,
Coahoma County:

I, Y. E. Howell, Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, do hereby certify that G. Edward Williams, whose name is signed to the foregoing certificate, is the Judge of the Chancery Court of said District, County and State, duly elected and sworn, and that the signature of said Judge is genuine.

43 In witness whereof I have hereto set my hand and affixed the seal of said court this the 17th day of January, 1921.

[SEAL.] Y. E. HOWELL,
Clerk of the Chancery Court of Second Judicial District of Coahoma County, Mississippi.

44 EXHIBIT "C."

United States District Court, Southern District of New York.

MINNA LOMBARD CRICHTON, Plaintiff,

against

MAGGIE L. WINGFIELD, Defendant.

STATE OF MISSISSIPPI,
Coahoma County:

Personally appeared before me, the undersigned Chancery Clerk of Coahoma County, Mississippi, Earl Brewer who says upon oath that he is a practicing lawyer at Clarksdale, Mississippi and was in 1919 and that some time prior to the death of E. H. Lombard, that he

ent for affiant and that affiant went to his room and discussed his ffairs with him, that Mrs. Minna Ethel Crichton was present during part of the conversation and that E. H. Lombard, the father of Irs. Crichton, informed affiant that his daughter, Mrs. Crichton, fter the death of Mrs. Lombard had gone to the bank and checked ut all the money he had on deposit and had also taken from a lock ox in the bank all notes, securities, insurance policies and every pecies and form of property that he the said E. H. Lombard had nd that she had left him sick in bed penniless and that he had been rying to get her to agree to return all or part of the property, and hat she had declined to do so and that he wanted to know of me, as a awyer, whether or not there was any way to compel her to return is property and especially the property that belonged to him and is wife jointly, which consisted principally of some notes; and hereupon I advised him that I could obtain a mandatory injunction rom the Chancellor of the Chancery Court and compel her to return he property belonging to his wife's estate and to him jointly. He hereupon asked me to procure such an injunction and to do so at nce. Thereupon Mrs. Minna Ethel Crichton announced that she ad been advised by counsel and that she was aware of the fact that mandatory injunction could be obtained to compel her to return the property, but that she would disobey the injunction and that she was advised that they could do nothing except send her to jail and she had made up her mind to go to jail before he would return the property to Mississippi. Thereupon I went out nd prepared a bill for the mandatory injunction and returned and old Mr. Lombard in her presence that I had prepared the bill for an njunction and could obtain it and would have her served with it if e desired. He said that he hated to have his daughter sent to jail, nd, after they had discussed the matter for some time in my pres- nce, she agreed with him that she would return the property at an arly date and that she would give him sufficient money to pay all of is bills and take care of him until she returned with his part. She hen asked me to meet her down at the train and that she would give e the money for him, and I met her at the depot just before the rain was to depart that she was to return to New York on, and she ave me some amount of money, I have forgotten the exact amount, hich I placed to his credit in the bank and gave him the deposit slip, nd she told me at that time that she had changed her mind and did ot intend to return the property or any part thereof to Mississippi, at she had it in New York out of the jurisdiction of the Courts of lississippi and that she was going to keep it there, and thereupon e stepped aboard the train and the train pulled out and she left r New York.

Her father then sent for me and asked me if there was any way at he could give his sister Mrs. Wingfield, a part of his property and told him he could assign such portion of the notes that were payable him and his wife as he desired. He then asked me if it would be ssible for her to transfer the notes to an innocent purchaser for a valuable consideration and defeat his sister. I then asked him if the notes had been endorsed by him and he told me that they had not been and I advised him then that he could

make this assignment and let his sister put it of record in Sunflower County where the mortgage security notes were recorded and give notice to the makers and payers of the notes, and I thought she could get it.

Thereupon, he asked me to prepare the instrument of assignment and bring it to him to sign and to bring some good reliable citizen who was an officer to take his acknowledgement to it, and, after the instrument was prepared, I returned to his room in company with Mr. N. B. Sessions, Vice-President of one of the banks of the city, and one or two other gentlemen, and he explained to all of us why he was executing this instrument, and then signed it and requested Mr. Sessions to take his acknowledgement after reading it over carefully.

(Sgd.) EARL BREWER.

Sworn to and subscribed before me this 18th January, 1921.

[SEAL.] (Sgd.) Y. E. HOWELL,
Chancery Clerk of Coahoma County,
State of Mississippi.

47 EXHIBIT "D."

STATE OF MISSISSIPPI,
Executive Department:

To all who shall see these presents, Greeting:

Be it known, that Jos. W. Power, whose name is subscribed to the annexed certificate, was on the day of the date thereof the duly qualified and legally acting Secretary of State of the State of Mississippi in the State of Mississippi, that his attestation to the annexed—Certificate—is in due form of Law, and made by the proper officer, and that full faith and credit are due to all his official acts.

In testimony whereof I have caused the Great Seal of the State to be hereunto affixed.

Given under my hand, at the City of Jackson, this 17th day of January, A. D. 1921.

LEE M. RUSSELL.

By the Governor:

[SEAL.] JOS. W. POWER,
Secretary of State.

48 Chapter 47.

Executors and Administrators.

2102. (1928). Property not to be Removed from the State, and Penalty Therefor.—An executor or administrator shall not remove any of the property of the estate out of this State. If a Chancellor or Clerk of a Chancery Court shall be satisfied, by petition or otherwise, in term-time or vacation, that any executor or administrator is about to remove the property of the estate out of this state, he shall

issue a precept to the Sheriff of the proper county, commanding him to seize the property about to be removed and hold the same until legally disposed of, and the letters of such executor or administrator may be revoked, on due notice, and administration de bonis non granted to some other person. And in case of any such removal, suit may be forthwith instituted on the bond by any of the distributees or creditors of the estate; and, on satisfactory evidence of the removal of the property out of the state, judgment shall be rendered for the full value thereof, and such other damages as the parties suing shall have sustained.

* * * * * * *

STATE OF MISSISSIPPI:

Office of Secretary of State, Jackson.

I, Jos. W. Power, Secretary of State of the State of Mississippi, do hereby certify that I am the keeper of the original records of the acts, and statutes passed and enacted by the Legislature of said State, and I do further certify that the above and foregoing excerpt from Chapter 47 of the Code of Laws of the said State, as enacted and adopted by the said Legislature in A. D. 1906, is a true and correct copy of the said excerpt, being designated as Section 2102 of the said Code of Laws, and that the same is now in full force and effect as law in the State of Mississippi.

49 In testimony whereof I have hereunto set my hand and affixed the Great Seal of the State of Mississippi which is the seal of my office.

[SEAL.]

JOS. W. POWER,
Secretary of State of the State of Mississippi.

50 EXHIBIT "E."

In the Chancery Court of the Second District of Coahoma County, Mississippi, in Vacation.

In re Estate of Mrs. EVA W. LOMBARD, Deceased.

Petition for Probate of Will.

To Honorable Joseph A. May, Chancellor of the Seventh Chancery Court District of the State of Mississippi:

Your petitioner, Minna Ethel Crichton, respectfully represents that on the 25th day of May, A. D. 1919, Mrs. Eva W. Lombard, late of the Second District of Coahoma County, Mississippi, departed this life, leaving a last will and testament duly signed, published and attested, as your petitioner believes, and which she, in pursuance of the statute, herewith presents to your Honor for probate.

That said will is subscribed by L. H. Fisher, E. L. Wrenn, and Eldred L. Rawles, as witnesses to the signature and publication

thereof, all of whom, as your petitioner knows, reside in the County of Coahoma, in said State of Mississippi.

That said testatrix, in her last will and testament nominated and appointed your petitioner to be the executrix thereof.

And your petitioner further shows that the said Eva W. Lombard, died siezed and possessed of real and personal property, consisting chiefly of an estate in lands, all of which are situated and lying in Bronxville, City of Yonkers, State of New York, and that so far as your petitioner knows the said testatrix did not, at the time of
51 her death, own any lands situated elsewhere than as above stated, and that the said lands are devised by the said last will and testament.

Your petitioner further represents that according to the best information which your petitioner has been able to obtain, the said personal estate of the said testatrix, is worth about $25,000.00 and over.

That your petitioner, moved by a desire of meeting and fulfilling the wishes of the said testatrix, and that the last will and testament may be, in all things, executed according to the true intent and meaning thereof, is willing to accept and undertake the office and trust therein confided to her.

In consideration whereof, and to the end that the said will and testament may be performed as aforesaid, your petitioner prays that the said L. H. Fisher, E. L. Wrenn, and Eldred L. Rawles, subscribing witnesses as aforesaid, may be summoned to appear and be before this court forthwith, then and there, and otherwise as provided by law, to testify in the matter of the said will, as it may please your honor to direct; and that probate of said will may thereupon be granted, and the same ordered for record.

And your petitioner prays further, that it may please your honor to grant her letters testamentary of said last will and testament on her taking the oath prescribed by the statute, without entering into bond, the same having been expressly waived by the terms and provisions of the said last will and testament; and that your honor will *not* appoint suitable appraisers, to value and appraise the
52 goods, chattels and personal estate of the said testatrix, and make such other orders as to your honor may seem meet and proper in the premises.

And your petitioner, as in duty bound, will ever pray, etc.

MINNA ETHEL LOMBARD CHICHTON.

Sworn to and subscribed before me this the 28th day of May, A. D. 1919.

E. F. WHITTINGTON,
[SEAL.] *Notary Public.*

The following appears on the back: 2382. In re Estate of Eva W. Lombard. Petition for Probate of Will. Filed May 28th, 1919. Y. E. Howell, Clerk.

53 EXHIBIT "E."

In the Chancery Court of the Second District of Coahoma County, Mississippi. In Vacation.

In re Estate of EVA W. LOMBARD, Deceased.

Upon reading and filing the petition, duly verified of Minna Ethel Crichton, for probate of a certain instrument of writing, purporting and alleged to be the last will and testament of Eva W. Lombard, deceased, late a resident of the Second District of Coahoma County, Mississippi, and for letters testamentary thereupon, and on taking and reading the testimony of E. L. Wrenn, and Eldred L. Rawles, subscribing witnesses thereto, and the court after hearing all and singular the proofs and allegations adduced, proved and submitted, and maturely considering the same, being now satisfied that said instrument is fully and legally established as the true and original last will and testament of the said Eva W. Lombard, deceased, and that the said deceased was at the time of her death, a resident of the second district of Coahoma County, Mississippi, and that the lands devised by the said last will and testament are situated in Bronxville, City of Yonkers, State of New York, and that the personal property devised by the said last will and testament is all located in the said Second District of Coahoma County, Mississippi, the place of residence of the said decedent at the time of her death; and that the said Eva W. Lombard, was on the day of the date of said will, to-wit: on the 23rd day of April, A. D. 1919, of lawful age to devise, and of sound disposing mind, memory and understanding, and of right in law entitled to make said will:

54 It is thereupon considered, ordered, adjudged and decreed that the said instrument of writing be admitted to probate and recorded as the true and original last will and testament of the said Eva W. Lombard, deceased.

It is further considered, ordered, adjudged and decreed, on motion of the said Minna Ethel Crichton, that letters testamentary of said last will and testament, be granted to her, on her taking the oath prescribed by the statute; the execution of any bond by her being expressly waived by the express provisions of said will.

Adjudged, ordered and decreed in vacation, on this the 28th day of May, A. D. 1919.

[SEAL.] Y. E. HOWELL,
Chancery Clerk.

On the back appears the following: #2382. In re Estate of Eva W. Lombard. Order admitting will to Probate and Granting letters testamentary. M. Book 5. Page 254.

55 #2382.

THE STATE OF MISSISSIPPI,
Coahoma County, ss

By the Chancery Court of said County.

Whereas, Eva W. Lombard, Deceased, late of said County, made in her lifetime her last will and testament, which on the 28th day of May in the year of our Lord one thousand nine hundred and nineteen was proved, approved and admitted to record in said Court, and probate thereof granted to Minna Ethel Crichton the Executrix thereof and therein appointed Executrix, without necessity of giving bond and the said Minna Ethel Crichton having complied with the provisions of the statute in such cases made and provided.

Therefore, To the intent that the said Will may be well and truly performed, we do give, grant and commit unto the said Minna Ethel Crichton the administration of all and singular the goods and chattels, rights and credits, of and belonging to the estate of said testator, with full power to take the same unto — hands and possession, and to ask, levy, recover and receive the same, wherever they may be in this state; to well and truly administer the said goods and chattels, rights and credits, according to law; to make a just and true account of her actings and doings therein, when thereto required by our said Court; and to well and truly pay and deliver all the legacies contained and specified in the said Will so far as the goods and chattels, rights and credits will extend and the law charges her, hereby confirming the said executrix with full and ample authority to dispose of all and singular the said goods and chattels, rights and credits ac-
56 cording to the tenor of said last Will and Testament, and the true intent and meaning of the said testator, by virtue of these presents.

Witness, the Honorable Joe May, Chancellor of the 7th District, this 28th day of May, A. D. 1919, and the seal of said Court hereunto affixed

Y. E. HOWELL,
Clerk.

On the back appears the following: #2382. State of Mississippi, Coahoma County, Chancery Court. Minna Ethel Crichton, Executrix of the Estate of Eva W. Lombard, Deceased. Letters Testamentary. Filed May 28th, 1919. Recorded Book 1, Page 91. Y. E. Howell, Clerk.

57 *Last Will and Testament and Codicil of Eva W. Lombard.*

I, Eva W. Lombard, of Clarksdale, Coahoma County, Mississippi, wife of Ephriam H. Lombard of the same place, being of sound and disposing mind and memory, and mindful of the uncertainty of human life, and intending to dispose of all my property of whatso-

ver kind and nature upon my death, do hereby make, publish and leclare this to be my last will and testament, hereby revoking all ther wills and codicils by me at any time heretofore made.

First. I direct that my funeral expenses and all my just debts e paid, provided they are probated, registered and allowed within he time and in the manner prescribed by law. It is also my desire hat in addition to the payments of such debts my Executor shall ay off and discharge all liens that may exist at the time of my death ipon any real estate that I may then own.

Second. I give and bequeath to my friend Susie Ming Knight he sum of One hundred ($100.00) Dollars in cash.

Third. I give and bequeath to my friend Hattie Wiggs the sum f One Hundred ($100.00) Dollars.

Fourth. I give and bequeath unto my niece Mary Marrell Allen, he sum of One Hundred ($100.00) Dollars.

Fifth. I give and bequeath unto my nephew, Arrington Allen, he sum of One Hundred ($100.00) Dollars.

Sixth. I give and bequeath unto my little companion Bettie Louise Ming my emerald and diamond ring, and one diamond pin now eing worn by my daughter Mrs. Powell Crichton. I have heretofore provided for her by conveying to her certain real estate which 8 in my judgment will provide ample means for her maintenance and education. I desire that my daughter Minna Ethel Crichton shall become her guardian and look after her property and education.

Seventh. I give and bequeath unto my grandson Powell Crichton, r., the sum of One Thousand ($1,000.00) Dollars which shall be ayable to his guardian at the expiration of three years from the date f my death.

Eighth. I give and devise unto my beloved husband Ephriam l. Lombard, the land and residence thereon in Bronxville, City of onkers, County of Westchester, State of New York, which I purhased from Ruth B. Johnson; and I hereby direct that my executrix hall pay off all mortgages thereon as well as interest and taxes which ay have accrued to the date of my death. My said husband shall wn and possess said property for and during the term of his natural fe, and after his death it is my will and desire, and I hereby devise he said property to my daughter Minna Ethel, wife of Powell Crichon, in fee in remainder, but it is expressly provided that if my said usband and my said daughter shall jointly agree thereto, the said roperty at their election may be sold on such terms and at such me as they may jointly elect and if such sale should be made then he proceeds of the sale I hereby devise, bequeath and give to my aughter Minna Ethel Crichton.

Ninth. I give and bequeath to my old servant Joseph Jonson the sum of One Hundred ($100.00) Dollars.

Tenth. I give and bequeath unto my mother Mary E. Arrington the sum of Three Hundred ($300.00) Dollars.

Eleventh. I give and bequeath to my friend Mrs. Gretton the sum of Fifty ($50.00) Dollars.

59 Twelfth. I give and bequeath to Mrs. Emma Du Bose the sum of Fifty ($50.00) Dollars.

Thirteenth. I give and bequeath to my niece Mrs. Anna Cage the sum of One Hundred ($100.00) Dollars.

Fourteenth. I give and bequeath unto my beloved cousin J. H. Sherard, Sr., the sum of Fifteen Hundred ($1,500.00) Dollars.

Fifteenth. I give and devise unto my beloved daughter Minna Ethel Crichton all of my entire estate both real and personal, which includes my interest in the W. D. Corley notes after paying all of above mentioned bequeaths.

Sixteenth. The legacies and devises given by my will I direct to to be paid in full without any state or United States Inheritance transfer taxes being deducted, and direct my Executrix to pay all such transfer taxes on said legacies and devises from my residuary estate.

Seventeenth. I nominate, constitute and appoint my daughter Minna Ethel Crichton Executrix of this my last will and testament and I hereby direct that my said Executrix shall not be required to furnish bond for the faithful performance of her duties as such Executrix.

In witness whereof, I have hereunto subscribed my name at the end hereof and sealed these presents, and do publish and declare the foregoing as and for my last will and testament hereby revoking a will made by me on the 5th day of September in the year of our Lord one thousand nine hundred and eighteen.

Witness my hand and seal this the 23rd day of April in the year of our Lord one thousand nine hundred and nineteen.

EVA W. LOMBARD.

60 STATE OF MISSISSIPPI,
County of Cathoma:

Personally appeared before me, the undersigned Notary Public in and for said county and state Mrs. Eva W. Lombard, who acknowledged that she signed and delivered the foregoing will and testament on the day and year therein mentioned.

Witness my hand and seal this the 23rd day of April, A. D. 1919.

[SEAL.] J. D. BOYD,
Notary Public.

My commission expires January 9th, 1923.

The foregoing instrument was subscribed by the above named testatrix Eva W. Lombard, in Sherard, County of Coahoma, State of Mississippi, on the 23rd day of April, in the year of our Lord, One Thousand Nine Hundred and Nineteen, in our presence, and was at the same time and place published and declared by her to us to be her last will and testament, and thereupon we, at her request, and in her presence, and in the presence of each other, did subscribe our names thereto as attesting witnesses, this attestation clause having first been read aloud to us in the presence of the said testatrix.

Names.	Residences.
L. H. FISHER	Sherard, Miss.
E. L. WRENN	Sherard, Miss.
ELDRED L. RAWLES	Sherard, Miss.

61 In the Chancery Court of the Second District of Coahoma County, Mississippi, in Vacation.

In the Matter of the Last Will and Testament of Mrs. Eva W. Lombard, Late of the Second District of Coahoma County, Mississippi, Deceased.

This day personally appeared before me, E. F. Whittington, the undersigned Notary Public for the City of Clarksdale, in the County and State aforesaid, the undersigned E. L. Wrenn and Eldred L. Rawles, subscribing witnesses to a certain instrument of writing purporting to be the last will and testament of Mrs. Eva W. Lombard, deceased, late of the Second District of Coahoma County, Mississippi, bearing the date of 23rd day of April, A. D. 1919, who having been by me first duly sworn depose and say:

That the said Mrs. Eva W. Lombard signed, sealed, published and declared the said instrument as her last will and testament in the presence of these deponents the said E. L. Wrenn and Eldred L. Rawles, and in the presence of each of them, on the day of the date thereof, to wit: on the 23rd day of April, A. D. 1919, and that they, the said deponents signed the said instrument in the presence of the said Mrs. Eva W. Lombard. That the said testatrix was then of sound and disposing mind and memory, and more than 21 years of age, and that these deponents each and all subscribed said instrument as witnesses thereto, at the instance and request and in the presence of her, the said Mrs. Eva W. Lombard, the said testatrix, and also in the presence of each other, on the day and year aforesaid, to-wit: On the 23rd day of April, A. D. 1919; and that
62 L. H. Fisher likewise signed said will as a subscribing witness thereto.

ELDRED L. RAWLES.
E. L. WRENN.

Sworn to and subscribed before me this the 28th day of May, A. D. 1919.

[SEAL.] E. F. WHITTINGTON,
Notary Public.

Filed for record May 28th, 1919. Recorded May 28th, 1919.
Y. E. HOWELL,
Clerk.

63 In Minute book 5 at page 306 of the minutes of the Chancery Court of the Second Judicial District of Coahoma County, State of Mississippi, of the November term 1919, appears the following:

"It is ordered that the Clerk's Acts in vacation be and the same are hereby approved in the following cases: 2382.

W. F. GEE,
Chancellor."

64 STATE OF MISSISSIPPI,
Coahoma County:

In the Chancery Court of the Second District of Coahoma County, Mississippi, in Vacation.

In re Estate of EVA W. LOMBARD, Deceased.

This day personally appeared before me E. F. Whittington, the undersigned Notary Public for the City of Clarksdale, in the County and State aforesaid, the undersigned Minna Ethel Crichton, who thereupon made and subscribed the following oath, as executrix of the will of Mrs. Eva W. Lombard, deceased, to-wit: I do swear that the writing exhibited by me is the true last will and testament of Mrs. Eva W. Lombard, as far as I know and believe, and that I as executrix thereof, will well and truly execute the same according to its tenor and discharge the duties required by law.

MINNA ETHEL LOMBARD CRICHTON.

Sworn to and subscribed before me, this the 28th day of May, A. D. 1919.

[SEAL.] E. F. WHITTINGTON,
Notary Public.

65 *Certificate of Chancery Clerk.*

STATE OF MISSISSIPPI,
Coahoma County, ss

I, Y. E. Howell, Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, duly elected, qualified, and acting, and as such clerk, have in my charge, care and keeping all of the records of the Chancery Court of the said Second Judicial District of Coahoma County, Mississippi, hereby certify that there was filed in my office on the 28th day of May, 1919, in the cause of "Estate of Eva W. Lombard vs. Minna Ethel Crichton, Executrix," numbered 2382 on the docket of the said Chancery Court in my office, a petition by Minna Ethel Lombard Crichton for the

probate of the last will and testament of Eva W. Lombard deceased, and that pages 1 and 2 hereto attached constitute a true and correct copy and exemplification of the said petition as it now appears on file in my office; and I further certify that pages 3 and 4 hereto attached constitute a true and correct copy and exemplification of the order of the court on said petition and that said order is now on file in my office and is of record in Minute Book 5 at page 254 of the records of the Minutes of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, on file in my office; and I further certify that page 5 hereto attached is a true and correct copy and exemplification of letters testamentary issued by the Chancery Court of the Second Judicial District of Coahoma County, Mississippi to Minna Ethel Crichton, the original of which said letters testamentary is now on file in my office and is recorded in book 1 at page 91 of the records of letters testamentary; and I further certify
66 that pages 6, 7, 8, 9 and 10 constitute a true and correct copy of the last will and testament and codicil of Eva W. Lombard, deceased, together with the proof of said will by two of the subscribing witnesses thereto and the original of which said will and testament and codicil is now on file in my office and it, together with the proof thereof hereto attached, is of record in Will Book #2 at pages 55 to 58, inclusive, of the records of wills in my office, and that page 11 is correct copy of order approving acts of Clerk in Vacation and that page 12 is correct copy and exemplification of affidavit of Minna Ethel Lombard Crichton.

And I further certify that the papers hereto attached are the only papers of any kind, nature and description and include all orders and petitions which have been filed in this office in said cause 2382.

Given under my hand and seal of office on this the 13th day of January, 1921.

[SEAL.] Y. E. HOWELL,
Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi.

STATE OF MISSISSIPPI,
Coahoma County:

I, G. Edward Williams, Judge of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, do hereby certify that Y. E. Howell, whose name is signed to the preceding certificate of exemplification, is the Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, duly elected, qualified, acting and sworn, and that as such Clerk he has in his charge, care and keeping all of the records of every kind, nature and description of the said Chancery Court in said
67 District, County and State. And I further certify that the seal affixed to such exemplification is the seal of said Chancery Court and that the attestation thereof is in due form of law.

This the 13th day of January, 1921.

[SEAL.] G. ED. WILLIAMS,
Judge of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi.

I, Y. E. Howell, Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, do hereby certify that G. Edward Williams, whose name is signed to the foregoing certificate, is the Judge of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, duly elected, qualified, acting and sworn, and that the signature of the said Judge is genuine.

In witness whereof I have hereunto set my hand and affixed seal of said Court, this the 13th day of January, 1921.

[SEAL.] Y. E. HOWELL,
Clerk of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi.

68 EXHIBIT "F."

Westchester County Surrogate's Court, White Plains, New York.

George A. Slater, Surrogate.
Robert P. Smith, Clerk.
James G. Bagg, Deputy Clerk.

Clerk's Office,
January 17, 1921.

Messrs. Guggenheimer, Untermyer & Marshall,
120 Broadway,
New York City.

DEAR SIRS:

Re E. H. Lombard.

An exemplified copy of the will and proofs in the estate of the above named decedent was filed and recorded on January 19th, 1920, but no ancillary letters have been issued.

Very truly yours,
(Sgd.) JAMES G. BAGG,
Deputy Clerk.

J. G. B./L.

69 EXHIBIT G.

United States District Court, Southern District of New York.

MINNA LOMBARD CRICHTON, Plaintiff,

against

MAGGIE L. WINGFIELD, Defendant.

STATE OF MISSISSIPPI,
Coahoma County:

This day before me the undersigned authority within and for said County and State personally appeared Ed. Brewer, who being by me duly sworn, on his oath says: That W. D. Corley who signed that certain deed of trust in favor of E. H. Lombard and Eva W. Lom-

bard, dated January 1st, 1917, and of record in Book E-5 at page 326 of the records of land mortgages and trust deeds in the office of the Chancery Clerk of Sunflower County, State of Mississippi, and who signed the notes secured by said trust deed is a resident and citizen of the State of Colorado; That M. P. Sturdivant and J. A. May, the persons to whom W. D. Corley sold the lands secured by said trust deed, and who assumed the payment of the notes secured by said trust deed, are both residents and Citizens of the State of Mississippi; that the present owners of said lands mentioned and set out in said trust deed are J. W. Cutrer, Oscar Johnston, Oscar Carr and W. A. Ritchie and that they are residents and citizens of the Second Judicial District of Coahoma County, State of Mississippi, and that they assumed the payment of the notes mentioned and set out in said trust deed and that said notes are to be paid by them; that W. D. Cutrer, named as trustee in said deed of trust, is now deceased and, so far as affiant knows, no other trustee has been appointed, it being provided in said trust deed for the appointment of a substituted trustee. That W. D. Cutrer, in his lifetime, was a resident and citizen of the Second Judicial District of Coahoma County, State of Mississippi.

ED. BREWER.

Sworn to and subscribed before me on this the 22nd day of January, 1921.

[SEAL.] DAN BREWER,
Notary Public.

70 EXHIBIT H.

Deed of Trust.

W. D. CORLEY

to

E. H. & EVA W. LOMBARD.

This indenture made and entered into on this the 1st day — January, A. D., 1917, by and between W. D. Corley, party of the —, and W. D. Cutrer, as Trustee, herein, party of the second part, and E. H. Lombard and Eva W. Lombard, parties of the third part, all of the County of Coahoma, and State of Mississippi, witnesseth:

That the party of the first part, for and in consideration of the trusts, covenants, warranties and considerations hereinafter mentioned, and for the sum of Five ($5.00) Dollars cash in hand paid to him by the party of the second part, the receipt of which is hereby acknowledged, has this day granted, bargained, sold, conveyed and specially warranted unto the said party of the second part, and unto his successor, or successors in trust, hereinafter mentioned, the following property situate in the County of Sunflower State of Mississippi, more particularly described as follows:

Lot Thirteen (13) of Section Seventeen (17), all in Section Twenty (20) less Lots Three (3) and Four (4); All of Section Twenty One (21); The West Half (W. 1/2) of Section Twenty seven (27); All of Section Twenty Eight (28); All of Section Twenty Nine (29), except Lot Ten (10); The North East Quarter (S. E. 1/4) and East Half of North West Quarter (E. 1/2 of N. W. 1/4) and North West Quarter of South East Quarter (N. W. 1/4 of S. E. 1/4) and South East Quarter of South East Quarter (S. E. 1/4 of S. E. 1/4) all in Section Thirty (30), the North East Quarter of North East Quarter of Section Thirty One (31); Lots One (1), Two (2), Six (6), Eight (8), Nine (9), Twelve (12), and Thirteen (13), of Section Thirty Two (32); The North Half (N. 1/2) and South East (S. E. 1/4) of Section Thirty Three (33); All of the above described lands being in Township Twenty Four (24), Range Four (4) West.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto be-
71 longing or in any wise appertaining, unto the said party of the second part, and his successor or successors in trust, in fee simple, forever, for the use and benefit of the party of the third part.

But this conveyance is made in trust for the following purposes, to-wit:

Whereas, the party hereto of the first part is justly indebted to the parties of the third part for purchase money of the foregoing described Tracts of land, in the sum of $314,800.00, due and payable in Ten (10) equal annual payments of $31,480.00 each, evidenced by Ten (10) promissory notes of the party of the first part, dated January 1st, 1917, and payable to E. H. Lombard, and Eva W. Lombard, at the Bank of Clarksdale, of Clarksdale, Mississippi, said principal notes being described as follows, to-wit:

1 Note for $31,480.00 due on or before Jan. 1st, 1918;
1 Note for $31,480.00 due on or before Jan. 1st, 1919;
1 Note for $31,480.00 due on or before Jan. 1st, 1920;
1 Note for $31,480.00 due on or before Jan. 1st, 1921;
1 Note for $31,480.00 due on or before Jan. 1st, 1922;
1 Note for $31,480.00 due on or before Jan. 1st, 1923;
1 Note for $31,480.00 due on or before Jan. 1st, 1924;
1 Note for $31,480.00 due on or before Jan. 1st, 1925;
1 Note for $31,480.00 due on or before Jan. 1st, 1926;
1 Note for $31,480.00 due on or before Jan. 1st, 1927;

Each of said notes bearing interest at the rate of Six (6%) per cent per annum from maturity and executed by the party of the first part the first of said principal notes bearing a credit of Nine Thousand and Ten ($9,010.00) Dollars as of date January 1st, 1918.

Also the following interest notes of even date herewith, payable to the said E. H. Lombard and Eva W. Lombard, to-wit:

1 Note for $18,888.00 due January 1st, 1918;
1 Note for $16,999.20 due January 1st, 1919;

1 Note for $15,110.40 due January 1st, 1920;
1 Note for $13,221.60 due January 1st, 1921;
1 Note for $11,332.80 due January 1st, 1922;
1 Note for $9,444.00 due January 1st, 1923;
72 1 Note for $7,555.20 due January 1st, 1924;
1 Note for $5,666.40 due January 1st, 1925;
1 Note for $3,777.60 due January 1st, 1926;
1 Note for $1,888.80 due January 1st, 1927;

But it is expressly stipulated notwithstanding the dates of which the said principal notes are herein written to mature, if by reason of unusual war or financial conditions or crop conditions, caused by the boll wevil or otherwise in the section of the country where all of said above described lands are located, if during any three in succession or otherwise, throughout the life of this Deed of Trust, in the event the price of upland middling cotton in the said described section of the country is Ten (10) Cents per pound or less or in case of a failure of crops to the extent that in the opinion of the party of the first part the payment of the principal note due for the year in which such conditions prevail would embarass the operation and conduct of the business and plantation hereinbefore described, the party of the first part, may, by written application to the parties of the third part, thirty (30) days in advance of the due date of any principal note during any one of said three years, whether successive or otherwise, that he, the party of the first part, desires, to have the payment of said principal note then due and other notes thereafter to become due extended and thereupon on the full payment to the parties of the third part of all the interest on all the sums so secured by this Deed of Trust to date of application, then the parties of the third part shall extend the payment of each and all of the said principal notes for one year from their nominal due date so that the three applications if made and allowed, will make an extension of three years from the nominal due date, though all of said extensions need not be made in successive years; and provided further, that in case the three years extension above mentioned is made by the parties of the third part, as aforesaid, that, nevertheless, if thereafter the party of the first part should pay up the interest and principal to and including the date when such conditions will prevail
73 again as are provided for above in this stipulation, then the party of the first part may again for any other one or two years during the life of this Deed of Trust, whether in successive years or not, ask for and obtain from the parties of the third part, under the conditions above described and set forth, a further extension of one or two years, as the conditions, in the opinion of the party of the first part, will warrant, so that said last two extensions, if asked for and made, would make in all extensions by the parties of the third part to the party of the first part to be given of five years, though none of said years need be in succession; But it is expressly further provided that in the event of extension the interest on the whole of the unpaid indebtedness to be paid promptly an-

nually on the first day of January of each year during each and all of said extensions, so that regardless of when the payments of principal as due, the interest shall be paid annually upon all unpaid purchase money notes.

It is further stipulated and agreed as a part of the consideration of this instrument, that, whereas, the said E. H. Lombard, and Eva W. Lombard, did on January 1st, 1913, execute a Deed of Trust to secure F. H. Carlisle, Trustee, to secure a loan of $20,000.00 made by Caldwell and Smith, the said Deed of Trust being recorded in Deed Book C-4, at page 325, of the record of Land, Deeds and Mortgages of said Sunflower County; and,

Whereas, there remains due on said indebtedness the sum of $12,000.00, and interest thereon, and said Deed of Trust having been given on the lands hereinbefore described, and is an encumberance on said lands:

It is therefore understood and agreed by and between the parties hereto that the parties of the third part are to pay off and discharge the said indebtedness at maturity thereof, and in case they fail to do so, then the party of the first part herein may pay of- and discharge the same and receive credit for such payment on his note hereinbefore described as due or before January 1st, 1918.

74 Now therefore, for the faithful performance of the stipulations hereinbefore agreed upon, and the payment of said notes according to said stipulations, and the interest thereon when the same falls due under said stipulations, then there presents shall be void; but, if default be made in the payment of any of said notes or interest thereon, or any part thereof, when the same are due, according to the agreements and stipulations hereinbefore mentioned, or in default of the faithful performance of any of the agreements as aforesaid, and of the payment of taxes to be legally assessed against said lands when due, then this Deed of Trust shall remain in full force and effect, and the party of the second part hereto, or any substituted Trustee, as hereinafter mentioned, shall, upon the request of the parties of the third part, sell the property hereinbefore described, or a sufficiency thereof, at public auction to the highest bidder for cash at the front door of the Court House in the Town of Indianola, Mississippi, after first giving three weeks public notice of the time, terms, and place of sale and of the property to be sold, according to the provisions of Section 2772 of the Code of 1906, of the State of Mississippi, and amendments thereto; and the said Trustee making such sale shall thereupon execute a deed or deeds to the purchaser or purchasers thereof; and out of the proceeds shall pay, first, the cost and expenses of executing this trust, including reasonable compensation to the Trustee for his services; and, second, he shall pay the debt hereby secured, or what remains unpaid at the time of said sale, and the surplus, if any, he shall pay to the party legally entitled thereto.

It is further expressly understood and agreed that in case of the refusal, neglect, or incompetency to act of the said Trustee or his absence from the State, then the parties of the third part or the legal holder of said notes, can appoint and substitute another Trustee or

Trustees, as often as may be necessary in the place of the said Party of the second part hereto, whose acts done in the premises shall be of the same validity as if done by the party of the second part.

75 In testimony whereof, the party of the first part has this day hereunto set his hand, this the day and year first above written.

W. D. CORLEY.

STATE OF MISSISSIPPI,
County of Coahoma:

This day personally appeared before me, E. J. Mullen, a duly qualified and acting Notary Public within and for the County and State aforesaid, W. D. Corley, Grantor in the foregoing Deed of Trust, who acknowledged that he signed and delivered the foregoing instrument of writing on the day and year therein mentioned, as his voluntary act and deed, and for the purposes therein set forth.

Given under my hand and Notarial Seal, this the 19th day of June, A. D., 1917.

[SEAL.] E. J. MULLEN,
N. P.

My com. expires on the 18th day of Oct. A. D. 1917.

STATE OF MISSISSIPPI,
County of Sunflower:

I certify that this instrument was filed for record in my office at 5 P. M., on the 7th day of January, 1918, and was duly recorded the 15th day of January, 1918, on page 326, of Book No. E-5 in my office.

Witness my hand and seal of office, this the 15th day of January, 1918.

[SEAL.] JOHN W. JOHNSON,
Clerk.

76 STATE OF MISSISSIPPI,
County of Sunflower:

I, John W. Johnson, Clerk of the Chancery Court of the above mentioned County and State, hereby certify that the attached sheets contain a full, true, and correct copy of that certain Deed of Trust as fully and completely as the same appears of Record in my office, in Record Book No. E-5, at page 326, et seq., thereof.

Witness my hand and official seal, this the 30th day of July, A. D., 1919.

[SEAL.] JOHN W. JOHNSON,
Clerk.

By L. T. CHANDLER,
D. C.

77 [Endorsed:] United States District Court, Southern District of New York. Minna Lombard Crichton, plaintiff, against Maggie L. Wingfield, defendant. Copy. Notice of Motion and Affidavits. Guggenheimer, Untermyer & Marshall, appearing specially for defendant, 120 Broadway, Borough of Manhattan, City of New York. To Thomas B. Felder, solr. for pltff., 14 Wall St., N. Y. City. Recd. Jany. 31 '21.

78 *Answering Affidavits.*

Served Feb. 7, 1921.

United States District Court, Southern District of New York.

MINNA LOMBARD CRICHTON, Plaintiff,

against

MAGGIE L. WINGFIELD, Defendant.

STATE OF NEW YORK,
County of New York,
Southern District of New York, ss:

Minna Lombard Crichton, being duly sworn, deposes and says: I have read the affidavit of Earl Brewer, verified the 18th day of January, 1921.

My mother, Mrs. Eva W. Lombard, died in Sherard, Mississippi, on May 25th, 1919, in the residence of John N. Sherard. Mr. Sherard was my mother's first cousin. His parents died when he was a little boy, and he lived with my grandparents, growing up with my mother, so that they felt just like brother and sister. Mr. Sherard is a leading member of the Methodist Church, is one of the wealthiest men in that part of the country, is a trustee for the Methodist Hospital, and has been a liberal contributer, is a member of the legislature, and stands very high in every way.

In April, 1919, my mother gave me all the promissory notes referred to in this action. The said notes were drawn to the order of E. H. Lombard and Eva W. Lombard or bearer. Mother said I was the proper person to take care of the notes, and to keep them, as they would all belong to me some day. I brought the said notes to New York on or about May 3rd, 1919, and placed them in my safe deposit box in the Gramatan National Bank, where they have remained until the beginning of this action, when I deposited them with the Clerk of this Court, with the exception of the first principal note and interest note, due January 1st, 1921. After I was
79 appointed executrix of my mother's estate, and also of my father's estate, I never, at any time, took any of said notes into the State of Mississippi, or out of the Southern District of the State of New York.

Mr. Crichton and I arrived in Clarksdale, Mississippi, about March 22nd, 1919. My mother wished Mr. Crichton to make out her In-

come Tax report. When she looked for the keys to her lockbox, in order to turn over the necessary papers to Mr. Crichton, the keys were missing. A few days prior to our departure from Florida, mother had given her bunch of keys to my father to play with. When we couldn't find the keys in any of the trunks or suitcases, which we had had in Florida, we came to the conclusion that the keys must have been lost. I telephoned to Mr. Lamkin, the President of the bank where the lockbox was, and told him mother's keys to her box had been lost, and asked him what steps I must take in order to get new ones, as mother wished to get some papers out for Mr. Crichton. He was very mysterious, and said he didn't believe the keys had been lost; that surely I could find them. I told him on my word of honor that the keys had been lost, because we had searched every available place for them. He suggested that I look again, and then telephone him; that it was a very expensive proposition to get new keys for a lockbox. That made us suspicious, and mother went in to Daddy's room, and asked him if he knew where the keys were. He had a very cunning look on his face, and said he did, but was not going to give them to her. Mother said, "Why, they are my keys. Of course you are going to give them to me." He said, "I will never give them to you." Then, mother left the room, and sent me to the bank to demand the keys in her name, with a Power of Attorney she had given me. The President of
80 the bank then told me that the day I arrived in Clarksdale, Mr. Wingfield delivered a paper to him, which he showed me, signed by Daddy, and witnessed by Mr. Wingfield, Mr. Oscar Baugh and Dr. John W. Primrose, in which my father requested the bank, under no conditions, to let me, or my mother open the lockbox. This was mother's lockbox, paid for by her. My lawyer, Mr. John W. Cutrer, demanded that they turn over the lockbox to me, as my mother's agent, giving the lawyers for the bank until nine o'clock the next morning to do so before we brought action.

My mother had reason to believe that the keys were in the possession of Mrs. Wingfield, and in the hope of settling the affair in a friendly manner, called Mrs. Wingfield into her room. She requested Mrs. Wingfield to turn over the keys to her. Mrs. Wingfield shugged her shoulders, and said she would never get the keys from her, Mrs. Wingfield. Then mother went back again to my father, and he said that he had not intended to cast any reflection on me by cancelling my Power of Attorney at the Planters' Bank, or by keeping me out of the lockbox. He said that he trusted me, and would see that I got the keys.

That evening, Mrs. Wingfield brought the keys to Sherard in a sealed envelope, and threw them at me. It was the next morning that Mr. Sherard and I, acting as my mother's agents, took the keys to the bank and got the lockbox. Mother turned over the entire contents of the box to me.

During the conversation mother had with Daddy about the keys, she told him that he should not say that she and I had misused his money when it was not true. Daddy appeared very much distressed over this, and said, "Why you know I trust you both abso-

lutely, and I do not intend to cast any reflection on either of you by this." The same day, he gave me a new Power of Attorney. Mother then said, "Now, everything we have belongs to her, and she is the only person we can trust to attend to our business affairs.
81 Even if she isn't to be trusted, she would be stealing from no one but herself, because everything you and I have belongs to her." Daddy agreed with her, perfectly. Mother told me she realized Daddy's mental condition, and that she wished all the papers to be in my hands, so that Daddy, in his weak moments, could not be influenced by any designing persons to give away anything they both wanted me to have.

At the time of my mother's death, my father was in the worst mental condition he had ever been in, hardly realizing that mother was dead. My home in Bronxville had burned, and was being repaired. Three days after mother's death, after completing all arrangements for my father's comfort in the home of Mr. Sherard, my uncle, I came back to New York, with the understanding that the instant my house was finished, and the paint sufficiently dry, I would return to Sherard and bring him to New York with me, to be with me and the baby. As my baby had been in the North for over a month, Daddy was always begging to be taken where baby was, saying he would take complete charge of the baby if I would let him. Before leaving Sherard, I installed a graduate doctor and another nurse to take care of him, and arranged for a negro man to help care for Daddy. I made all arrangements for tipping every servant in the house once a week, so that they would gladly do the different things for Daddy. I arranged for his laundry, and supplied quantities of extra sheets and night-shirts, so the least comfort could be satisfied. I asked Uncle John (Sherard) if he would attend to the financial part for me—the paying of nurses, etc., because I had accounts at all the stores in Clarksdale where everything, of every description, could be bought. Uncle John said he would be glad to do so, and would handle it on a business basis through his bookkeeper, paying everything once a week, but requested that I leave only $500 because he didn't care to have over that amount on hand
82 saying that each time the $500 was nearly exhausted, he would let me know, and I could replenish it.

Shortly after I left, Mrs. Wingfield went to Sherard, discharged the nurses, removed my father to her house in Clarksdale, and installed a nurse of her own, without consulting me. He remained there for over three weeks, and the only notification I had of his removal was from the Sherards. The Wingfields did not even so much as send me a postal card as to his condition the whole time he was there, prior to July 1st.

The room in which Daddy was to stay, was completed early in July, and I left New York about July 5th, to go to Clarksdale to bring my father back. I did not even wait to put the furniture back.

I arrived in Clarksdale, Mississippi, on the 7th day of July, 1919, for the purpose of bringing Daddy back to my home in Bronxville, New York. My trip was also in answer to pleas made by him, one of which was in a letter written in his own hand, and another sent

the trained nurse, both of which letters asked me to come and
him. I went immediately from the train to the house of Mrs.
ingfield, where my father had been taken. Mr. Sherard and his
ughter, Mrs. Rawles, accompanied me. My father expressed his
y at seeing me, saying he was very glad I had come, because he
d had a terrible time. He went on to say, "They have had me
cked up in Jack Cutter's office." I knew this was untrue, because
r. Cutter had been East for some time. I told Daddy that he
ly imagined it. He was very much upset at this, and said he had
t imagined it, and that it was absolutely true, and he had had a
rible time. He then wanted to know how I had found out where
was. I, not wanting to excite him, said that I had known all
ng where he was. He said, "How did you get here?" I said that
I had come on the train to Clarkedale. He said, "Well, after
you got to Clarkedale, how in the world did you ever get out
here?" The house was only a five minute walk from the sta-
n. I finally succeeded in changing the subject, and told him I had
me down in answer to his request to take him back to New York
th me, to see baby and myself. I told him to try and get a good
ght's rest, and that I would come back the first thing next morn-
g and make arrangements. He said that would be fine.

The following day, before returning to Mrs. Wingfield's, I went to
Dr. Henderson, who was attending my father during the absence
Dr. Primrose, my father's physician, from the city. I told him I
shed to take my father to New York with me on the following day,
d that he was very anxious to go with me. I said I was going to
e Dr. Eldrid Rawles and a trained nurse with me, but before mak-
definite plans, I wished to have his advice on the subject. He
d, "Mrs. Crichton, I cannot advise you about this. Your father
ust as liable to die sitting in his chair on Mrs. Wingfield's front
rch, as he is to die on the train to New York. He is living on bor-
ed time now, and may go at any moment. If you do take him,
d he should die on the train, I want you to know that it is not
ur fault, and under no conditions have you killed him, because the
p will not hurt him in any way. Mr. Lombard is in a condition,
ntally and physically, where he should be allowed to do as he
hes; and I cannot conscientiously advise you, but if he was my
ther, I would take him."

I then went to Mrs. Wingfield's, and Daddy was perfectly con-
ted to go with me to New York. He talked about the baby, and
s glad he would be to see him. I left Mrs. Wingfield's at about
o'clock, telling Daddy I would go to Mrs. Sherard's for luncheon,
d immediately afterwards would buy the tickets to leave for New
York, the next day at noon; and that I would come back to
see him as soon as I had made arrangements. When I got to
Mrs. Sherard's about 25 minutes later, Mrs. Sherard met me
he door, and said the Wingfields, or the nurse, had called up to
that Daddy had changed his mind, and was not coming to New
k. Right after luncheon, I went to Mrs. Wingfield's, accom-
ied by Mrs. Rawles and Miss Alice Du Bose, and asked to see
dy. I was told that he was sound asleep, which struck all three

of us as being very suspicious. Mrs. Wingfield was very eager that Mrs. Rawles, Miss Du Bose and I should leave immediately for a contemplated trip to Darling, Mississippi. We spoke of it afterwards that for some reason Mrs. Wingfield was very anxious for us to leave before my father awakened. Gov. Brower says, in his affidavit, that all of the things recorded in his affidavit happened the first time he had had any business conversation with my father, and in my presence. This is not true, because, as we went down the steps of the porch, we passed Gov. Brower going into the house with some papers in his hand. When Mrs. Rawles, Miss Du Bose and I reached the automobile, Mrs. Rawles said, "Do you think you ought to let Gov. Brower go in to see your father?" I said, "Personally, I would rather have things come to a head. Let him go in and see Daddy, and then the trouble will burst tomorrow." I laughed, and said that there would probably be the devil to pay when we got back from Darling.

I went to Darling, Mississippi, that afternoon to attend to some business in regard to my mother's estate. I came to Mrs. Wingfield's the following morning, accompanied by my Uncle, Mr. Sherard. I was told by Daddy, "They have told me that if I make the trip to New York with you, I will die on the way. If you will go, and come back for me, I will go next time, when I am better." I told Daddy that he should not let Mrs. Wingfield influence him against me, and change his plans about the trip. He said,
85 "Baby, I am afraid to make the trip, because they tell me I will never live 'til I get to New York."

While I was there, different people came into the room. Mrs. Wingfield came in saying, "Please keep my name out of the conversation." This proves she must have been listening in the hall. There was a big living room adjoining the room in which Daddy was, with no door between, and off the living room was a dining room, where twenty or thirty boarders were at luncheon. All the noise they made during meal time could be distinctly heard in my father's room, and at the same time, I was allowed to have no private conversation with him, whatever. My father needed attention, and asked everyone to leave the room but the nurse and myself. After they left, he asked me to lock the door, and come and talk to him, which I did. While I was talking to him, Mrs. Cage, (Mrs. Wingfield's daughter) came to the door, and said, "Open this at once." She said we didn't have to lock the door to keep her out, and that I was not to lock the door under any circumstances. I told her that the door was locked at my father's request, and that she should get out, and that I intended to lock it whenever I cared to. I told her there was no benefit gained by locking the door except to please my father, for the reason that the whole side of the room was open, with the exception of a thin curtain. She left the room, and I relocked the door. Soon afterwards, Ex-Gov. Brower came in, and the discussion was started concerning my father's property. Gov. Brower looked me in the eye and told me that my father was on the charity of friends. Mr. Sherard, who was with me at that time, said that it was an absolute falsehood, and that he could prove it. He ques-

tioned Gov. Brower as to exactly who "friends" meant. Gov. Brower gave no definite statement as to this. He said that I had taken all of my father's property out of the state, and he was left there
86 penniless. Gov. Brower was astonished when I informed him that every note I had taken out of the state bore my mother's name as joint payee, and that I was her executrix and sole heir. Gov. Brower had no definite facts, and his statements were made on pure hearsay. He resented the fact when I informed him that he was working for Mrs. Wingfield's interests. He informed me that he had known me since a child, and had nothing but my own interests at stake. I told him he need not trouble himself with my affairs; that Jack Cutrer was my lawyer, and had been, and still was my father's lawyer; and I suggested that if he was not Mrs. Wingfield's lawyer, as I accused him of being, and since he was not Daddy's lawyer, or mine, I thought the sensible thing for him to do was to get out. He said that he wished to discuss the thing with me, because if I did not do as my father wished, that my father was going to disinherit me. I told him that my father was perfectly free to disinherit me any time that he wished, but no threats on the part of Gov. Brower could make me do anything but what I felt was the right thing for my interests, my father's interests and the interests of my child. I told him my lawyer, Mr Cutrer, was out of town, and that I would make no statement to him. He demanded in the name of my father that I return all of my father's notes to the state. I refused flatly to do this. He took a paper from his pocket, which he had already prepared, and said that unless I signed a paper promising to bring all of my father's property back to the state, my father would sign this paper, which would put me in jail. He said, "Of course you won't have to go to jail, because your father will go your bail until you can make arrangements to have the papers brought to the state." I informed him that I was not a fool, and that I was well aware that no one could wish bail on me. That I had informed my uncle that I did not wish him, or any others, to go my
87 bail. That I would not accept bail from any one, and that if he signed that paper, I intended to go to jail and stay there. I asked him if there was any law by which I could be murdered for not telling him where the papers were. He said, "No." I said, "Very well. The papers are in a New York bank, in my own private lockbox, and no one knows where they are. Now, you can put me in jail, but you will never get the papers." He said, "Do you mean to tell me that you would go to jail before you will give your father his papers?" I said, "I most assuredly will, because, in turning over his papers, I turn over every penny my mother left me in the Corley and other notes." He then went to the bed, and gave Daddy a pen, ink and the paper, and said, "Eph, I am very sorry, but you will have to sign this." Daddy refused flatly to do this.

Gov. Brewer made a misstatement in his affidavit regarding this matter. My father did not inform Gov. Brewer in my presence that I, after the death of my mother, had gone to the bank and checked out all the money he had on deposit and had also taken

from a lock box in the bank all notes, securities, insurance policies and every species and form of property he had, and had left him sick in bed penniless, and that he had been trying to get me to agree to return all or part of the property. I was present on this day during the entire conversation my father had with Gov. Brewer. He did not make any of the requests of Gov. Brewer, as stated in his affidavit. The only thing my father said to Gov. Brewer was that he wanted me to bring his papers back to the state because he felt that now he was able to attend to his own affairs. He said that he had no desire to give any money away; that everything was to come to me, but he simply wanted to attend to his things, himself.

88 Gov. Brewer states in his affidavit that he informed my father that he could obtain a mandatory injunction from the Chancery Court, and compel me to return the property belonging to my father's and mother's estates. Gov. Brewer states that my father thereupon asked him to procure such an injunction, and to do so at once. Gov. Brewer also states that I informed him I had been advised by counsel, and that I was aware of the fact that a mandatory injunction could be obtained to compel me to return the property. Both of these statements are false. I did not tell Gov. Brewer I had been advised by counsel, because I had seen no one. I did tell him, as above stated, that I would not return the notes. Gov. Brewer states that he went out and prepared a bill for the mandatory injunction, and returned and told my father, in my presence, that he had prepared the bill for an injunction, and could obtain it, and would have me served with this, if he desired. This is absolutely untrue. Gov. Brewer did not leave the room during my presence, and at the end of the conversation which I had with Gov. Brewer, as stated heretofore, he immediately produced the paper from his pocket, which he had already prepared and tried to get Daddy to sign it, as said above. I told Daddy to sign the paper, if it would relieve his mind; that I realized he was being influenced against me, but that nothing he could do would make me have any hard feelings against him, or change my love for him. He did not say he did not want to send me to jail, as Gov. Brewer states in his affidavit. He just refused flatly to sign the paper, and gave no reason.

An hour or so before, Mr. Sherard had suggested to Gov. Brewer, as a way out of the difficulty, that I bring the notes back only if Daddy signed a paper which would assure me that, at his death, or before his death, none of his property would go to Mrs. Wingfield, with the exception of a small sum of money. After Gov.

89 Brewer had threatened to throw me in jail, my father not only refused to sign the paper, but to discuss in any way any amount going to Mrs. Wingfield.

During this conversation, I told Daddy that he really should change his mind and come back to New York with me, because Mr. Wingfield had sent me a telegram the day after I left New York, which did not reach me until I arrived in Clarksdale, as follows:

"Mrs. Powell Crichton,
Bronxville:

Come at once my wifes health has given away and she is no longer able to look after your father.

F. G. WINGFIELD."

Daddy would not believe that Mr. Wingfield had done this, until we had Mr. Wingfield come into the room and read the telegram to Daddy. From that time on, he would not do anything Gov. Brewer wanted him to do, and would not discuss in any way giving Mrs. Wingfield any money.

Gov. Brewer states that I promised Daddy to bring the notes back at an early date, and give Daddy sufficient money for his bills. This is not true. I told Daddy that he had made all of the money, himself, and that the greatest pleasure to me that could be derived from the money would be in Daddy's spending every penny of it for his own comforts; but that I would never bring the money back to the state for him, in his weakened condition, to be influenced by the Wingfields into giving them property which I knew he had planned always for me and my baby to have. Daddy said, "Why you know I want it all to come to you and the baby." Gov. Brewer states that I asked him to meet me at the train, and that I would give him some money for Daddy. This is absolutely untrue.

Gov. Brewer said, after my father refused to sign the paper, putting me in jail, that what seemed to bother Daddy was
90 that he felt he was on the charity of his friends, and that he had no money. Mr. Sherard said, "That is absolutely ridiculous. Minna left sufficient money with me for every possible thing that could come up, even tips for the servants, and left a check for $500 with the understanding that I was to let her know, and she would send on further amounts the minute these grow low." I stated at the time that Daddy had no ready money, and that the money which I had been advancing was money of my own, and money received from my mother's insurance, and that I had not taken one penny of my father's estate. Gov. Brewer wanted to know if I was willing to give Daddy money. I said, "Certainly. He has been getting it from me, and I have paid all his bills in the past, during his illness, why should I not wish to do it in the future?" I told him that, if he wished, since Daddy was staying with Mrs. Wingfield, I would put $500 at a time in the Planters Bank in my father's name, and as often as he wished it, for his expenses. Daddy said this was perfectly satisfactory to him, and I gave Gov. Brewer a check for $500, which he deposited.

Gov. Brewer, as a last resort, came to me in the corner of the room and said, "Your father is so upset, and so worried, wouldn't you be willing, owing to his present mental condition, to sign a paper promising to bring the notes back here for settlement, when the question of the estate comes up?" He said that any sort of paper would do to pacify him while I was away. I said that I didn't mind doing that, but that the paper would have to be worded

just as I wished it. Gov. Brewer said, "Very well." I gave him the pen, ink and paper, and said I would dictate what I wished put in the paper. He said that he would prefer writing it in legal form at his office. I told him that I was leaving on the afternoon train for Memphis, and New York, and under no condition did I intend to remain over, unless he reconsidered the matter,
91 and decided to put me in jail. I advised him not to go to his office and put things in the paper which I had told him not to, because when he brought the paper to the train for me to sign, if I found he had put anything in that I had not told him to put in, I would flatly refuse to sign the paper, and then he would not have time to rewrite it before I left town. He said, in his affidavit, that I told him I would give him some money for Daddy when I arrived at the train. This is also absolutely untrue. As said before, I gave Gov. Brewer a check for $500 at Mrs. Wingfield's and Uncle John (Mr. Sherard) gave him a check for $100, which he had left from money I had previously given him for my father's expenses. Gov. Brewer took both of the checks, and deposited them in my father's name, and when he came to the station, he brought me the deposit slips.

Gov. Brewer says that when he arrived at the station, I told him I had changed my mind, and did not intend to return the property, or any part thereof, to Mississippi; that I had it in New York, out of the jurisdiction of Mississippi, and was going to keep it there. That I thereupon stepped upon the train and the train pulled out for New York. This is untrue.

Gov. Brewer came to the train about 10 minutes before I left, and brought the paper which he had drawn up. As I had anticipated, he had inserted a clause in the paper which would have forced me to return to Mississippi at any time he desired, and would have put my notes and papers in his possession. I asked Gov. Brewer whom he intended me to give the papers to when I arrived in Mississippi. He said, "Why, you can give them to me, and I will settle the matter for you." I said I wanted it distinctly understood that neither he or the Wingfields would ever get their hands on the papers. I told him that some day he would wake up to the fact that I was no
92 longer a child, nor was I a fool; that he had exactly ten minutes to change the paper, and under no condition would I sign it as it was.

He took out a fountain-pen and put at the bottom of the paper, which was in the form of a letter addressed to my father, words to this effect:—"I promise to bring the notes and papers belonging to my father, back to Mississippi whenever the settlement of the estate is made, or at the first of the year for Income Tax reports. Under no conditions are the notes ever to leave my possession, or the possession of my lawyer, Mr. J. W. Outrer." I have a copy of this letter, and set it forth in detail in Exhibit A hereto attached. I signed this paper, keeping a copy thereof, and left for New York.

More than a year has elapsed since my father's death, but Gov. Brewer has not rendered any bill to me, as executrix, for any services rendered to my father. He is, at the present time, making an

affidavit for Mrs. Wingfield in this action, and is representing her in Clarksdale.

I desire to point out to the court that in my father's will, Mrs. Wingfield is left a legacy of $10,000, payable whenever sufficient funds come into my hands. Mrs. Wingfield owes my father's estate a past due mortgage for $5,000. Sufficient funds have not yet come into my hands, as all money so far received has been used to pay debts in my father's estate; and in fact, not sufficient funds have been received to even pay all the debts that have been paid, as I have advanced money of my own to pay some of them; and I have paid all debts accrued to date except the Mississippi State Inheritance Tax; I have borrowed the money from my husband to pay the Federal Inheritance Tax. I have heretofore offered to borrow the money, personally, to pay Mrs. Wingfield's legacy less the amount due
93 my father's estate from her on the above mentioned mortgage on her residence.

I also desire to point out that in my father's will, I am not required to make any accounting in his estate.

There are no creditors in the estate of my father except myself, and the Florida land contract on which the final payment of $8,000 and interest is due February 12th, 1921; also the Mississippi State Inheritance Tax. All the debts in my mother's estate have been paid with the exception of the Mississippi State Inheritance Tax; and all legacies have been paid except $1,000 to my son, Powell Crichton, Jr., who is an infant and lives with me in Bronxville.

I here state that at no time during my father's or mother's illness did I ever draw any of their money for myself, or for any other cause than to pay lawful obligations of my father and mother, and their actual living expenses.

I went back to Mississippi about August 12th, 1919, when my father's condition seemed to be about the same, but I brought him back to New York with me. I wrote him that I was coming to get him. I arrived at Mrs. Wingfield's at about 7 o'clock in the evening. Daddy was sitting on Mrs. Wingfield's porch in his invalid's chair. He seemed very excited, and said he was glad to see me, insisting that I take him away immediately. I took him to Mr. Sherard's with me that night, where we remained for two days, until we left for New York.

Mrs. Wingfield came to New York in October to see my father, and while here, tried to kidnap him one afternoon, when I had told her I did not plan to be at home. She came to Bronxville in a limousine with a doctor, and was astonished when she found me at home. She said she had come to take my father home. I refused to let him go. Daddy told her in my presence that he never could be any happier
than he had been in Bronxville, with me and the baby, but
94 that later, when cold weather started, he would go to Mississippi and pay her a visit. He died in Bronxville, New York, at my home, on November 3rd, 1919.

I here state that my father drew only about half of the money given Gov. Brewer—that is to say, about $300. He never asked me for any more money as long as he lived.

My father's illness started about September 1918, and even then it was a customary thing for him to say, "Well, I must go to the bank to-day to get money to run me." During his entire illness he would harp daily on the subject of money, and imagined himself penniless. This was very noticeable during our stay in Miami, Florida, from January to March, and grew decidedly worse after our arrival at Sherard, Mississippi. Often, during our stay in Sherard, I would take him big rolls of money from the bank, hoping to make him realize that he could have all the money he wished. Whenever I did this, he would get very much excited, and ask me what in the world I meant by bringing him so much money, and would tell me to take it back and put it in the bank immediately.

At no time from January 1919 until his death, was he capable of attending to any business; and most of the time he was as helpless as a child, although he had moments at which, to a casual observer, he might have seemed normal. He never realized he was in Florida, or in Sherard. He sometimes grew violent, and often imagined himself in different countries. He suffered from an illusion that he was going to be hung for some crime he said he had committed, and at different times imagined that I was the person the police were searching for. On one particular occasion, he seemed to gather superhuman strength, and grabbed a poker and kept my Uncle John Sherard, Mrs. Sherard, Mrs. Rawles, Dr. Rawles, the nurse, servants and myself all at bay. He finally became ex-
95 hausted, and we put him back to bed. This was at Sherard approximately on May 1st, 1919. This insane condition was due mostly to his physical condition, as is more particularly described by Dr. Dear's affidavit; also to the fact that for 10 months prior to his death he was practically kept alive on morphine given him at the direction of physicians who attended him.

In Florida and in Sherard, Mrs. Wingfield had a great influence over my father. He felt that she was a very wonderful nurse, and seemed to be afraid that if he did anything against her wishes, she might refuse to help nurse him if he should need it.

When I was in Clarksdale in July, my father said several times that he had something important to tell me, but Mrs. Wingfield would come in the room and my father would stop talking, saying to me "Don't say anything."

The notes in this action are well worth their face value, and the plantation, which is security therefor, has been sold twice since the notes were signed, and each time for more money, and always more than the face amount of the notes in question.

MINNA LOMBARD CRICHTON.

Sworn to before me this 5th day of February, 1921.

MEDORA GAUGGEL,
Notary Public.

New York County Clerk's No. 343.
New York County Register No. 1355.

06 EXHIBIT A.

July 12th, 1919.

To Mr. E. H. Lombard, City:

DEAR FATHER:

I have caused to be deposited in the Planters' Bank to your credit today, Mrs. Sherard's check for $100.00, and my check of $500.00, which gives you a credit in the Bank subject to your check for any purpose you desire it of $600.00.

I agree that if you will write me at any time your funds are running low to deposit $500.00 to your credit to be used by you in paying your expenses.

I also agree with you that I will return sometime between this and January 1st and bring all your notes and papers, and have a settlement with you along the lines we discussed today. I am not to turn over to you any notes until a settlement is made satisfactory to us both.

Sincerely your daughter,

M. L. CRICHTON.

N. B.—The words underscored are the words which were added to the instrument by Gov. Brewer at the station, at the request of Mrs. Crichton.

07 In the District Court of the United States for the Southern District of New York.

MINNA LOMBARD CRICHTON, Plaintiff,

vs.

MAGGIE L. WINGFIELD, Defendant.

STATE OF NEW YORK,
County of New York,
Southern District, ss:

Brock McGeorge Dear, being duly sworn, deposes and says:

I am a physician, duly licensed to practice in the State of New York since 1913. That I am a graduate of the medical department of the University of Virginia, class of 1908, and have had considerable hospital experience, to wit: About 4 years in the German Hospital, nearly 1 year in Mt. Sinai Hospital, and about 4 months in Bellevue Hospital, and for the last six years I have been on the attending staff of Lincoln Hospital, in New York.

I have practiced as a general physician in Bronxville, New York, since 1913.

That in June 1918, deponent attended Ephraim H. Lombard at the residence of Powell Crichton, in Lawrence Park West, Bronxville, New York, and at that time found Mr. Lombard suffering with high blood pressure, chronic myocarditis, cerebral arterio celero-

sis, chronic interstial nephritis, pyelitis, cystitis, œdema of his lower extremities, chronic bronchial asthma and uremic poison.

On one occasion, in the summer of 1918, he suffered an acute dilation of the heart and œdema of the lungs. He was practically dead and pulseless, and his heart sounds were inaudible. I did a venesection, and withdrew ten ounces of blood from the vein in his arm which relieved the dilated heart, and injected strong stimu-
98 lants into the circulation through his veins, and he temporarily improved through this treatment.

After he had recovered from this attack, and was up, walking around, he still had to have medicines given to him by hypodermic injections, to wit, heart medicines—digitalis and camphor.

During this time, I noticed that his mental faculties were affected, that he would imagine things. For example, he would imagine that the nurse was trying to throw his clothes out of the window and leave him so that he would not be able to get out of the house in case of fire. He would also imagine that he was in Mississippi, and think I was some man working on his plantation. During this time he was not receiving any narcotic that could produce such delusions.

Mr. Lombard's wife was taken sick about August 25th, 1918, and required an operation. Mr. Lombard was up and about, and able to go out in an automobile. His heart was fairly well compensated, and his kidneys were acting as well as a doctor could expect from a man having as bad lesions in his kidneys. Throughout this time, I noticed that for a little while he could carry on a conversation with you, but after a period of about 15 or 20 minutes, he would suddenly stop, stare out into space, and talk irrationally and incoherently. I saw him then almost every day up until the time he went to Mississippi in the Fall of 1918. His organic trouble was still about the same, and my observance of his mental condition was that it was still impaired.

Mr. Lombard came again under my attention in the month of August, 1919, and I attended him daily, sometimes two or three times a day, until his death in Bronxville, New York, on November 3rd, 1919. My first impression, when I saw him upon his return, was that he was considerably worse organically, and his mental condition was about as bad as it could be, being like that of a child 5 years old.

99 Mr. Lombard had the same old complications, but in a more aggravated form. He had a large collection of water in his abdomen, which necessitated tapping. There was also a collection of water in each lung, which was partly responsible for his difficulty in breathing. His whole lower extremities were swollen to about three times their normal size, in a dropsical condition. During this time, on very few occasions was I able to observe him in any clear mental condition, and then it would be only for a few minutes. He would always imagine he was in Mississipi driving a mule team, and would imagine that someone was trying to murder him; that the house was on fire, and we had his clothes so he could not escape.

In my experience as a physician, I have seen and treated similar cases, and in every instance the mind of the patient became en-

feebled almost from the inception of the complications, and would grow worse during the complications that followed. In my opinion, Mr. Lombard was mentally incapable of transacting any business from the year 1918 to the date of his death.

Throughout the entire time of my observance, Mr. Lombard received the best and kindest care that could be extended to anyone. His daughter was at all times most considerate and kind to him, and tried to do everything she could to add to his comfort.

Several times in talking with Mr. Lombard, I was convinced that he had no idea of money matters, whatever. On one occasion he offered me $10,000 if I would let him go out for an automobile ride; and on another occasion he said he would give me one of his Corley notes if I would help him go to the sea-shore.

When I was attending him two and three times a day, he would tell me I had not been there to see him for a month; and after I had been seeing him constantly, he would accuse me of not having been to see him since he got back.

BROCK McGEORGE DEAR.

Sworn to before me this 4th day of February, 1921.

MEDORA GAUGGEL,
Notary Public.

New York County Clerk's No. 343.
New York County Register No. 1355.

Stipulation as to Notes.

United States District Court, Southern District of New York.

E-20-196.

MINNA LOMBARD CRICHTON, Plaintiff,

against

MAGGIE L. WINGFIELD, Defendant.

It is hereby stipulated between the undersigned plaintiff's attorney and the undersigned attorneys appearing specially and on behalf of the defendant that the following represent the form of notes which are the subject matter of this controversy:

$13,221/60. Clarksdale, Miss., Jany. 1st, 1917.

On or before January 1st, 1921, after date, I promise to pay to Eva W. & E. H. Lombard—or bearer, Thirteen Thousand Two Hundred Twenty-One & 60/100 Dollars at the Bank of Clarksdale, Clarksdale, Miss., for value received negotiable, with exchange, with interest at Six per cent per annum from Maturity until paid, and all attorney's fees and expenses incurred in collection. Presentment, de-

mand protest and notice of demand, protest and non-payment are hereby expressly waived by all parties hereto, as makers or endorsers.

W. D. CORLEY.

No. 4.
Interest.

$31,480.00. Clarksdale, Miss., Jany. 1st, 1917.

On or before January 1st, 1921 after date, I promise to pay to Eva W. & E. H. Lombard,—or bearer, Thirty One Thousand Four Hundred Eighty and no/100 Dollars at the Bank of Clarksdale, Clarksdale, Miss., for value received negotiable, with exchange, with interest at Six per cent per annum from Maturity until paid, and all attorney's fees and expenses incurred in collection. Presentment, demand protest and notice of demand, protest and non-payment are hereby expressly waived by all parties hereto, as makers or endorsers.

W. D. CORLEY.

No. 4.
Principal.

102 The other principal and interest notes are in the same form as No. 4 (supra) and severally in the following amounts and due on the following dates, to wit:

No. of note.	Date due.	Amt. of note, principal.	Amt. of note, interest.
5	Jan. 1, 1922	$31,480.00	$11,332.80
6	" " 1923	31,480.00	9,444.00
7	" " 1924	31,480.00	7,555.20
8	" " 1925	31,480.00	5,666.40
9	" " 1926	31,480.00	3,777.60
10	" " 1927	31,480.00	1,888.80

Dated, New York, April 22nd, 1921.

THOMAS B. FELDER,
Plaintiff's Attorney.
GUGGENHEIMER, UNTERMYER & MARSHALL,
Appearing Specially for the Defendant, Maggie L. Wingfield, for the Purposes of the Aforesaid Motions Only.

103 *Opinion of Judge Knox.*

Filed March 21, 1921.

District Court of the United States for the Southern District of New York.

E 20–196.

MINNA LOMBARD CRICHTON, Plaintiff,

against

MAGGIE L. WINGFIELD, Defendant.

Upon Motion to Set Aside Service of Process and to Dismiss Bill for Lack of Jurisdiction.

Louis Marshall and James Marshall, appearing specially for defendant, for the motion.

Thomas B. Felder, for plaintiff, in opposition.

KNOX, *D. J.*:

Plaintiff, the only child of Eva W. and Ephraim H. Lombard (both deceased), now is, and at all the times herein mentioned was, a resident of this judicial district and a citizen of the State of New York. Defendant, a sister of said Ephraim H. Lombard, resides in, and is a citizen of, the State of Mississippi.

Personal service of process in this action could not be had upon the defendant within this state, and such service has been effected pursuant to order of this Court, and upon the basis of §57 of the Judicial Code, within the State of Mississippi.

The bill of complaint herein, framed upon the provisions of the aforementioned section of the Judicial Code, alleges: That there are within the jurisdiction of this Court, and in possession of plaintiff, a series of notes, each dated January 1, 1917, and calling for the payment at specified times of large sums of money. Each of the notes is payable to Eva W. and E. H. Lombard—or Bearer—and the place of payment is a named bank in Clarksdale, Mississippi. The notes are secured by a deed of trust upon a large tract of land lying in Mississippi and formerly owned by the Lombards.

Plaintiff claims ownership of said notes under the wills of her father and mother; she asserts, however, that defendant also claims to own an undivided one-half interest in said notes by reason of an alleged assignment thereof, made by said Ephraim H. Lombard to defendant, upon August 1, 1919.

The bill sets up that at the time the said assignment was made and delivered, the said Ephraim H. Lombard was in failing health, and of unsound mind, memory and understanding, by reason whereof he failed to appreciate the nature and quality of his act; and fur-

ther, that the said assignment was obtained by defendant without consideration, and by the exercise of undue influence.

That, by reason of said assignment, and the rights claimed thereunder by defendant, the maker of the notes in question will not pay to plaintiff the money about to become due under one of said notes; that plaintiff, in dealing with the payor of the notes, will be seriously impeded and handicapped unless she be prepared to deliver the said notes to the said payor as they respectively become due and are paid, without complications and incumbrances.

[6] With an inducement of the foregoing character, plaintiff claims that the assertion by defendant of her alleged claim upon the notes constitutes a cloud, and casts doubt and suspicion upon plaintiff's ownership and title thereto; and that, unless this Court intervenes and cancels and sets aside the alleged assignment of an interest in said notes to defendant, and restrains her from asserting any claim of title to, or interest in, the notes, she (the plaintiff) will be subjected to immediate and irreparable injury. In view of the nature and character of the allegations in her bill, plaintiff asks for what she considers to be appropriate relief.

Section 57 of the Judicial Code reads as follows:

"Sec. 57. When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same State, such suit may be brought in either district in said State; Provided, however, that any defendant or de-

fendants not actually personally notified as above provided may, at any time within one year after the final judgment in any suit mentioned in this section, enter his appearance in said suit in said district court, and thereupon the said court shall make an order setting aside the judgment therein and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment according to Law."

Defendant, coming into court by way of a special appearance, objects to the exercise of jurisdiction herein, and moves that the service of process upon her be quashed and set aside first, upon the ground that service of process within the State of Mississippi was without authority of law; and second, that this suit is not within the class of cases provided for by the said section of the Judicial Code.

105 In support of her motion defendant has filed several affidavits and a number of exhibits. To these plaintiff has filed a lengthy reply wherein she controverts many of the statements made upon behalf of defendant.

The following facts, however, are beyond dispute:

Eva W. Lombard died May 25, 1919, and three days thereafter her will was probated in Coahoma County, Mississippi. The will made specific bequests of money to a number of friends and relatives of testatrix, and provided that the residuary estate, which included an undivided one-half interest in the notes, should go to plaintiff, who was named as executrix. And as such plaintiff has qualified.

Ephraim H. Lombard died November 3, 1919, leaving a will which bears date of August 12, 1919. This, it will be noted, is eleven days subsequent to the date of the questioned assignment to defendant. This will provides for a money bequest of $10,000 to defendant, and gives to plaintiff the residuary estate of the testator. Plaintiff is the executrix of this will, and has qualified in Coahoma County, Mississippi, where the will was probated.

Upon behalf of defendant's motion three main propositions are advanced:

(1) That the property within this district is not of such character as will, under the provisions of §57 of the Judicial Code, give this Court jurisdiction.

(2) That plaintiff's removal of the notes from Mississippi to New York was wrongful and in violation of the statutes of the former state.

(3) That plaintiff does not come into court with clean hands, and her suit, therefore, is without equity.

I will consider these propositions in the inverse order of their statement.

The basis of the one last mentioned is that plaintiff's title to a one-half interest in the notes is derived from the terms of her father's

will, and that the allegations of the will which make for the invalidity of defendant's assignment likewise impeach the validity of said will.

As to this, it may be observed that defendant, as a legatee of Ephraim H. Lombard, will be benefited by a finding that his will is a valid instrument; and this, irrespective of the conclusion reached as to the validity of the assignment. Inasmuch as plaintiff is the only heir-at-law and next of kin of her father, she will, if her father died intestate, succeed to his entire estate, and defendant can receive her legacy only in the event that the will is upheld.

It would seem, as a consequence, that defendant is in no position to complain of the theory upon which plaintiff has chosen to draw her bill.

As is suggested by counsel for plaintiff, the same degree of capacity necessary to sustain a will in favor of the natural object of a testator's bounty is less than that required in the management of business or the making of a contract. This doctrine finds support in the Federal Courts in the decision of Mr. Justice Washington in Harrison v. Rowan, 11 Fed. Cases, page 658, Case No. 6111

106 And certain it is, I cannot say, upon the facts now presented that plaintiff stands in need of the aid of an illegal transaction to make out her case, and that she comes into court with unclean hands.

Referring now to defendant's second proposition, it is the fact that §2102 of the Code of Mississippi provides that an executor or administrator shall not remove any of the property of the estate from out that state. The penalty for a violation of this prohibition is that property about to be removed may be seized by the sheriff, and the letters of the executor or administrator revoked. In case removal from the state has occurred, suit may forthwith be instituted upon the bond of the administrator or executor by any of the distributees or creditors of the estate, and judgment rendered for the full value of the property removed and such other damages as the parties suing shall have sustained.

By virtue of the terms of her father's will, plaintiff is not under bond, and, by like authority, she is not required to account for her administration of the estate. This, while not authorizing an illegal act, is not without some weight in measuring the freedom of action which it was intended by the testator that the executor should enjoy.

But aside from this consideration, plaintiff denies that she wrongfully removed the notes to New York. The notes were brought here in May, 1919, prior to the death of either of plaintiff's parents, and plaintiff accounts for their presence here in the following manner:

That her mother, realizing the then mental condition of Mr. Lombard, and that he was (so asserts the plaintiff) subject to the influence of designing persons, wished that all papers should be in the hands of plaintiff. The notes were then in a safe deposit box in Clarksdale, and the keys to the box had been given to Mr. Lombard. He was requested by Mrs. Lombard to deliver them to her. This he refused. Thereupon, the mother sent plaintiff to the bank where

he safe deposit box was located to demand, under a power of attor-
ey, executed by the mother, access to the papers. There plaintiff
as confronted with a paper signed by her father in which he in-
tructed the bank officials to refuse permission to plaintiff or her
nother to open the box. Further, demands for the keys were made
pon Mr. Lombard and the defendant, and finally, at the direction
f the former, the defendant turned the keys over to plaintiff. The
apers were then taken by plaintiff and removed to New York.

Upon behalf of defendant a lengthy affidavit has been filed by Ex-
overnor Brewer, of Mississippi. This document alleges certain
romises and agreements to have been made by plaintiff to her
ather to return the papers to Mississippi. The allegations are de-
ied in many important particulars by plaintiff, and I do not now
ntend to pass upon the veracity of the respective affiants, nor upon
he circumstances surrounding the relationship of the contending
arties. It suffices to say that the case presents all the bitterness and
npleasantness that ordinarily characterize a family dispute, and an
ttempt to pass upon the merits by way of affidavits is a most un-
atisfactory procedure. For that reason I pass by plaintiff's letter of
uly 12, 1919, addressed to her father, a part of which reads as
ollows:

"I also agree with you that I will return some time be-
tween this and January 1, and bring all your notes and
papers, and have a settlement with you along the lines we
iscussed today. I am not to turn over to you any notes until a
ettlement is made satisfactory to us both."

The more important fact is, that in August, 1919, plaintiff again
ent to Mississippi and upon her return to this state was willingly
ccompanied by her father. She took him into her home, and
here he remained until November 3, 1919, when he died. So far as
ppears he, at no time after coming to New York, requested plain-
iff to give him the notes or to return them to Mississippi.

If I should now assume that Mr. Lombard was so enfeebled and
is mentality so far spent as to be the prey of persons who had de-
igns upon his wealth, I cannot find plaintiff to have been guilty of a
rong in removing his papers to a place of safety. This is none the
ess true even though plaintiff was animated by a very lively desire
o protect the patrimony which, in the course of events, would
ooner or later come to her. In making the removal she was at the
ame time protecting the rights which her mother had in the notes.
And if the original removal of the notes from Mississippi was not
mproper, I do not see that plaintiff, upon the death of her father,
as under obligation to defendant to return the notes to Mississippi.
Subject only to the payment of debts, specific legacies and inheri-
ance taxes, plaintiff has, I think, a perfect right to possess the notes
s a part of her distributive share of her parents' estates. So far as
eceipt by defendant of her legacy is concerned, she is now, if her
ssignment be invalid, in no worse position than she was before
his suit was instituted. She has at no time had physical possession
f the notes, and such possession would doubtless be necessary to en-
ble her to benefit by the assignment she holds. I mean, that the

rights she has under such arrangement would be under the cloud of plaintiff's possession of the notes.

Summing up the entire situation upon this branch of the case, I may say that the rights of the parties are at present not so clearly apparent as to justify me in holding that plaintiff, if permitted to litigate her case in this jurisdiction, would thus be enabled to take advantage of her own wrong, and to place at naught the statutes of the State of Mississippi.

108 I thus approach defendant's contention that there is within this district no property which, under the provisions of §57 of the Code, will give this Court jurisdiction; and it is upon this that plaintiff's bill must stand or fall.

As has previously been said, the notes are secured by a deed of trust covering certain real estate within the State of Mississippi, and there the notes are payable. In addition, the maker of the notes, as well as the persons who have assumed payment thereof, reside in and are citizens of Mississippi.

In support of the Court's jurisdiction, plaintiff calls attention to the inclusive character given the term "personal property" by §39 of the General Construction Law of the State of New York. It reads:

"The term personal property includes chattels, money, things in action, and all written instruments themselves as distinguished from the rights or interests to which they relate, by which any right, interest, lien or incumbrance in, to or upon property, or any debt or financial obligation is created, wholly, or in part, and everything, except real property, which may be the subject of ownership."

This construction of the term "personal property" is, of course, controlling as to personal property having a situs within this State. Such construction cannot, I think, and notwithstanding Jellenik v. Huron Copper Mining Co., 177 U. S. 1, be relied upon for the purpose of determining the jurisdictional questions here involved.

If this case is to be ruled solely by a determination of the location of the debt owing by the maker of the notes, the question of situs thereby arising is one of almost hopeless confusion. For example, for the purpose of founding administration upon simple contract debts, and even if they be represented by bills of exchange or promissory notes, situs is at the place of the debtor's domicil. Wyman v. Halstead, 109 U. S. 654. This is likewise true of jurisdiction over debts for purposes of garnishment. Chicago, Rock Island &c. Ry. Co. v. Sturm, 174 U. S. 710. For purposes of taxation jurisdiction may exist at the domicil of the creditor as well as at that of the debtor. Blackstone v. Miller, 188 U. S. 189, and in Harris v. Balk, 198 U. S. 215, it would seem that the situs of the debt depends upon the place where the debtor is to be found.

These are not the only theories upon the subject. For example, Professor Beale, in his book entitled Cases upon Conflict of Laws, Vol. 3 p. 157, §25, says: "The truth, however, would seem to be that a chose in action, not being corporeal, has no situs for any purpose." And as opposed to this is the theory that there may be two situs,

an actual one at the domicil of the debtor, and a legal one at the domicil of the creditor. Minor, Conflict of Laws, §121.

Other views upon the subject, as entertained by various courts and writers, will be found in an interesting article by Charles E. Carpenter which appeared in the Harvard Law Review for May, 1918.

None of the above-mentioned cases, however, involve the question of jurisdiction under §57 of the Judicial Code, and are not, I think, particularly authoritative upon the question now before me.

As Mr. Justice Holmes said in McDonald v. Mabee, 243 U. S. 90, "The foundation of jurisdiction is physical power" and from the case of Chase v. Wetzlar, 225 U. S. 79, which arose under
109 §8 of the Act of March 3, 1875 (which is the origin of §57 of the Judicial Code), jurisdiction in cases such as this would seem to be based upon the power to "exclusively deal with property which is within the district where the suit is brought, and which property is, therefore, capable of being made subject to the dominion and the resulting control of the court."

As bearing upon the question as to whether or not the notes in question do constitute personal property within the district, my attention is called to the case of Manning v. Bordan, 132 Fed. 382. It was there said that "A promissory note is something more than a mere written promise; it is a negotiable instrument; it is recognized by the law merchant as property; the transfer of title to the debt is evidenced by the transfer of title to the note * * *." Whereupon the Court held the case to be within the purview of §8 of the Act of March 3, 1875, and that there was no distinction to be made as between the promissory note in question and a government bond in the same amount.

In Balke et al. v. Foreman Bros. Banking Co. et al., 218 Fed. 264, the District Court for the Northern District of Illinois held that certificates of stock in corporations, properly indorsed and delivered as security to a trustee, with power of sale in case of default in the trust agreement, are property having a situs at the place of business of the trustee, and under §57 of the Judicial Code a federal court in that district had jurisdiction of the suit to enforce a lien thereon and to bring in non-resident defendants.

In view, however, of what I conceive to be the law of the present case, I must, with deference, decline to follow the doctrine stated in the decisions just referred to. Assuming the facts set out in the bill, it follows that, for certain purposes, plaintiff has a local property right in the notes to which she asserts title. Here the notes may be sold and converted into money; here the plaintiff may receive payment if the debtor choose to pay; here the title to the notes, in the event of plaintiff's death, would be acquired by her legatees or next of kin. In other words, there is, within this district, a situs of the creditor's personal right to deal with her chose in action. Nevertheless, her ability, and that of any transferee, to enforce the right depends upon, and at present is governed by, the law of another jurisdiction. In this connection the following quotation from Black-

stone v. Miller, supra, is applicable: "What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay."

If jurisdiction does exist, in what manner, pending the hearing and determination of the case, can this Court prevent the debtor from paying to defendant any portion of his debt that may now be due? And if a decree be made, and defendant should elect to disregard it, in what manner could the Court's order, short of another law suit, be validated? It may be suggested that the debtor would pay the debt only upon surrender of the note which evidences it. In answer to this attention is called to the case of McIlroy v. Alsop, 45 Miss. 365. It was there held that the absence from the state of the evidence of debt would not defeat the recovery of the debt by the person entitled thereto under the law of Mississippi.

The fact that this Court cannot protect the plaintiff as against any action the debtor may see fit to take, or which the defendant may take as against the debtor, would seem to determine the question as to whether or not there is within this district any property capable of being made "subject to the dominion and the resulting control of this Court." The difficulty with plaintiff's position is that the situs of the debtor's obligation, and upon which depends the plaintiff's right, follows the actual situs of the debtor, or of his property (in case of a proceeding in rem to enforce it), and corresponds to the actual situs of tangible chattels. Minor, Conflict of Laws, §121.

Adverting for a moment to the line of cases which hold that the situs of a specialty is where the instrument is found, I may say, from my reading of the case of Wheeler v. New York, 233 U. S. 434, I am convinced that promissory notes are not within the rule that obtains as to specialties. The notes here are unsealed, and, according to 8 Corpus Juris 110, "An unsealed note is not converted into a sealed instrument * * * by the fact that it is secured by, and recited in, a sealed mortgage" citing cases.

From what has been said, and from my investigation of the law, I am forced to the conclusion, quite contrary to my first impression, that the Court has no jurisdiction of the subject matter of plaintiff's cause of action, and defendant's motion must prevail.

March 26, 1921.

110

_____,
U. S. District Judge.

111 *Final Decree.*

Filed April 9, 1921.

At a Stated Term of the United States District Court for the Hearing of Motions, Held in the Woolworth Building, in the Borough of Manhattan, City of New York, on the 9th Day of April, 1921.

Present: Hon. John C. Knox, Justice.

Equity. No. 20–196.

MINNA LOMBARD CRICHTON, Plaintiff,

vs.

MAGGIE L. WINGFIELD, Defendant.

Final Decree.

The motion herein, dated the 28th day of January, 1921, in which Guggenheimer, Untermyer & Marshall appeared specially for the defendant Maggie L. Wingfield, for the purpose of moving to quash the service of process made upon the defendant, pursuant to the order of Hon. John C. Knox, U. S. District Judge dated the 29th day of December, 1920, and for the dismissal of the bill of complaint, on the ground that this court has not acquired jurisdiction over this defendant, or over the subject matter of this action, came on to be heard at this Term and was argued by counsel, and thereupon, upon consideration thereof, it was

Ordered, adjudged and decreed that the service of process herein upon the defendant Maggie L. Wingfield be, and the same is hereby quashed and set aside, and that the bill of complaint herein be, and the same is hereby dismissed for lack of jurisdiction, and the order made by Hon. John C. Knox, U. S. District Judge, dated December 29th, 1920, providing for service upon the defendant Maggie L. Wingfield by the United States Marshal for the Northern
112 District of Mississippi be, and the same hereby is vacated, quashed and set aside in all respects, and all acts done thereunder, either by the plaintiff or by said United States Marshal be, and the same hereby are declared null and void.

JNO. C. KNOX,
U. S. District Judge.

113 [Endorsed:] In Equity. No. 20–196. United States District Court, Southern District of New York. Minna Lombard Crichton, Plaintiff, vs. Maggie L. Wingfield, Defendant. Copy. Final Decree. Thos. B. Felder, Attorney for Plaintiff, Office and Post Office Address, No. 14 Wall Street, Borough of Manhattan, New York City. Copy of the within Final Decree is hereby received. Dated New York, April 12, 1921. Guggenheimer, Unter-

myer & Marshall, Attorney-, appearing specially for the appellee for the purpose of contesting jurisdiction over the defendant in this cause.

114 *Petition and Order Allowing Appeal.*

Filed April 9, 1921.

District Court of the United States for the Southern District of New York.

E. 20-196.

MINNA LOMBARD CRICHTON, Plaintiff,

vs.

MAGGIE L. WINGFIELD, Defendant.

To the Hon. John C. Knox, District Judge of the Southern District of New York:

Your petitioner, Minna Lombard Crichton, the above-named plaintiff, conceiving herself aggrieved by the final decree made and entered in the above-entitled cause under date of the 9th day of April, 1921, by which said decree the Bill of Complaint herein is dismissed, after hearing the motion of the defendant appearing specially for that purpose, doth hereby appeal to the Supreme Court of the United States, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States.

Dated, New York, April 9th, 1921.

THOS. B. FELDER,
Attorney for Petitioner.

Office & P. O. Address, 14 Wall Street, New York City.

Appeal allowed upon entry of Bond in the sum of Two hundred and fifty ($250) dollars.

Dated April 9th, 1921.

JNO. C. KNOX,
U. S. District Judge.

115 [Endorsed:] In Equity. No. 20–196. United States District Court, Southern District of New York. Minna Lombard Crichton, Plaintiff, vs. Maggie L. Wingfield, Defendant. Copy. Petition & Order Allowing Appeal. Thos. B. Felder, Attorney for Petitioner, Office and Post Office Address, No. 14 Wall Street, Borough of Manhattan, New York City. Copy of the within Petition & Order is hereby received. Dated New York, April 12, 1921. Guggenheimer, Untermyer & Marshall, Attorney-, appearing specially for the appellee for the purpose of contesting jurisdiction over the defendant in this cause.

116 *Certificate of District Judge.*

Filed Apr. 9, 1921.

District Court of the United States for the Southern District of New York.

E 20-196.

MINNA LOMBARD CRICHTON, Plaintiff,

vs.

MAGGIE L. WINGFIELD, Defendant.

The plaintiff having entered her appeal to the Supreme Court from the decree of this Court entered on the 9th day of April, 1921, dismissing the Bill of the plaintiff herein, and vacating all proceedings heretofore entered herein,

I hereby certify that the said decree was entered solely because the case made by the Bill and evidence showed that the property involved was promissory notes physically present in this District, but which were payable without this District by parties who did not live in this District, and that such notes did not constitute personal property within the District under §57 of the Judicial Code, and therefore the Bill was dismissed solely because of lack of jurisdiction.

Dated, New York, April 9th, 1921.

JNO. C. KNOX,
District Judge of the United States for the Southern District of New York.

117 [Endorsed:] In Equity. No. 20-196. United States District Court, Southern District of New York. Minna Lombard Crichton, Plaintiff, vs. Maggie L. Wingfield, Defendant. Copy. Certificate of District Judge. Thos. B. Felder, Attorney for Plaintiff. Office and Post Office Address No. 14 Wall Street, Borough of Manhattan, New York City. Copy of the within Certificate is hereby received. Dated New York, April 12, 1921. Guggenheimer, Untermyer and Marshall, attorney- appearing specially for the appellee for the purpose of contesting jurisdiction over the defendant in this cause.

118 *Assignment of Errors.*

Filed April 9, 1921.

District Court of the United States for the Southern District o
New York.

E 20-196.

MINNA LOMBARD CRICHTON, Plaintiff,

vs.

MAGGIE L. WINGFIELD, Defendant.

And now comes the plaintiff in the above-entitled cause, and file
the following assignment of errors upon which she will rely in he
prosecution of the appeal in the above entitled cause from the decre
made by this Honorable Court on the 9th day of April, 1921.

First.

The Court erred in dismissing the bill, after hearing upon the bi
and motion to dismiss.

Second.

The Court erred in refusing to maintain jurisdiction of the abov
entitled cause.

Third.

The Court erred in dismissing the bill in the above entitled caus
for lack of jurisdiction.

Dated, April 9th, 1921.

THOS. B. FELDER,
Attorney for Petitioner.

119 [Endorsed:] In Equity. No. 20-196. United States Dis
trict Court, Southern District of New York. Minna Lombard
Crichton, Plaintiff, vs. Maggie L. Wingfield, Defendant. Copy. A
signment of Errors. Thos. B. Felder, Attorneys for Plaintiff, Offic
and Post Office Address No. 14 Wall Street, Borough of Manhattan
New York City. Copy of the within Assignment of Errors is hereb
received. Dated New York, April 12, 1921. Guggenheimer, Untei
myer and Marshall, attorneys appearing specially for the appelle
for the purpose of contesting jurisdiction over the defendant in thi
cause.

120 *Bond on Appeal.*

Filed April 11, 1921.

District Court of the United States of America for the Southern District of New York, in the Second Circuit.

MINNA LOMBARD CRICHTON, Plaintiff,

against

MAGGIE L. WINGFIELD, Defendant.

Bond on Appeal.

Know all men by these presents, that Minna Lombard Crichton as principal, and National Surety Company, a corporation under the laws of the State of New York, with its principal place of business at No. 115 Broadway, in the City, County and State of New York, as surety, are held and firmly bound unto the above named Maggie L. Wingfield in the sum of Two Hundred and Fifty ($250.) Dollars, to be paid to the said Maggie L. Wingfield for the payment of which well and truly to be made, said principal and surety bind themselves, their heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Sealed and dated the 9th day of April 1921.

Whereas, the above named Minna Lombard Crichton has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit, by a Judge of the District Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such, that if the above named Minna Lombard Crichton shall prosecute her appeal to effect, and answer all damages and costs if she fail to make her appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

NATIONAL SURETY COMPANY,
By D. CLINTON MACKEY,
Resident Vice-President.

Attest:
J. F. MORTON,
Resident Assistant Secretary.

STATE OF NEW YORK,
County of New York, ss:

On this — day of ——, 19—, before me personally came the within named —— ——, to me known, and known to me to be the individual described in and who executed the within bond and — acknowledged that — executed the same —.

—— ——.

121 [Endorsed:] District Court of United States, Southern District of New York. Minna Lombard Crichton, Plaintiff against Maggie L. Wingfield, Defendant. Bond on Appeal. Surety National Surety Company. ——— ———, Attorney for —. I approve of the *written* bond, and of the sufficiency of the surety thereon ——— ———.

Affidavit, Acknowledgment, and Justification by Guarantee or Surety Company.

STATE OF NEW YORK,
County of New York, ss:

On this 9th day of April, 1921, before me personally came D Clinton Mackey, known to me to be the Resident Vice-President o National Surety Company, the corporation described in and whic executed the foregoing bond of Minna Lombard Crichton as surety and who, being by me duly sworn, did depose and say that he reside in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate sea thereof; that the said National Surety Company is duly incorporated under the laws of the State of New York, that said Company ha complied with the provisions of the Act of Congress of August 13 1894, that the seal affixed to the within Bond of Minna Lombard Crichton is the corporate seal of said National Surety Company, and was thereto affixed by authority of the Board of Directors of said Company, and that he signed his name thereto by like authority as Res. Vice-President of said Company, and that he is acquainted with J. F. Morton and knows him to be the Resident Assistant Secretary of said Company; and that the signature of said J. F. Morton subscribed to said Bond is in the genuine handwriting of said J. F. Morton, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of Six Million dollars.

D. CLINTON MACKEY,
(*Deponent's Signature.*)

Signed, sworn to, and acknowledged before me this 9th day o April 1921.

HARRY LEE POWELL, JR.,
Notary Public for Queens County, No. 989.

Certificate filed in New York Co. 282, Kings 84.

New York Register's Office, 2229.

My commission expires March 30, 1922.

STATE OF NEW YORK,
County of New York, ss:

On this — day of ——, 19—, before me personally came ——— to me known, who, being by me duly sworn, did depose and say that he resides in ——; that the is the — of the —— the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name to the said instrument by like order.

122 *Citation on Appeal.*

UNITED STATES OF AMERICA, ss:

The President of the United States to Maggie L. Wingfield, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at the Capitol in the City of Washington, D. C., on the ninth day of May 1921, pursuant to an order allowing the appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein Minna Lombard Crichton is appellant and you are appellee and you are ordered to show cause, if any there be, why the decree in said cause mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District above named, this ninth day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-one, and of the Independence of the United States the One Hundred and Forty-four.

JNO. C. KNOX,
Judge of the District Court of the United States for the Southern District of New York.

123 [Endorsed:] District Court of the United States, Southern District of New York. Minna Lombard Crichton, plaintiff, vs. Maggie L. Wingfield, defendant. Citation. Thomas B. Felder, attorney for appellant, 14 Wall street, Borough of Manhattan, City of New York. Copy of the within Citation is hereby received this 12th day of April, 1921. Guggenheimer, Untermyer & Marshall, attorney-appearing specially for the appellee for the purpose of contesting jurisdiction over the defendant in this cause.

124 & 125 *Stipulation on Appeal Record.*

United States District Court, Southern District of New York.

MINNA LOMBARD CRICHTON, Plaintiff,

vs.

MAGGIE L. WINGFIELD, Defendant.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, April 23, 1921.

THOS. B. FELDER,
Attorney for Plaintiff.

GUGGENHEIMER, UNTERMYER & MARSHALL,
Appearing Specially for Defendant for the Purpose of This Motion Only.

126 UNITED STATES OF AMERICA,
Southern District of New York, ss:

MINNA LOMBARD CRICHTON, Plaintiff,

vs.

MAGGIE L. WINGFIELD, Defendant.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 23rd day of April in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the said United States the one hundred and forty-fifth.

[Seal of the District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, Jr.,
Clerk.

Endorsed on cover: File No. 28,252. S. New York D. C. U. S. Term No. 895. Minna Lombard Crichton, appellant, vs. Maggie L. Wingfield. Filed April 29th, 1921. File No. 28,252.

FILED
NOV 16 1921
WM. R. STANSBURY
CLERK

No. 312

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921

MINNA LOMBARD CRICHTON
Appellant

vs.

MAGGIE L. WINGFIELD
Appellee

MOTION, AFFIDAVIT OF SERVICE, STATEMENT OF FACTS, ASSIGNMENT OF ERRORS AND BRIEF.

JOHN W. CUTRER,
For Appellant.

THOMAS B. FELDER
Counsel for Appellant.

B. H. TYRRELL, PRINTER, 206-8 FULTON STREET, NEW YORK.

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IN THE

Supreme Court of the United States

MINNA LOMBARD CRICHTON
Appellant
vs.
MAGGIE L. WINGFIELD
Appellee

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

AND NOW, this 5th day of December, 1921, comes the appellant, by her counsel, and moves the Court to advance the above-entitled cause for hearing in the manner prescribed by Rule Six, in accordance with Rule Thirty-two of this Court, because the only question in issue is the question of the jurisdiction of the Court below, and this appeal is taken under Section Five of the Act of March 3rd, 1891.

THOMAS B. FELDER,
Counsel for Appellant.

SOUTHERN DISTRICT OF NEW YORK, ss. :

POWELL CRICHTON, being duly sworn according to law, deposes and says: That on the 12th day of November, 1921, he deposited in the

mail, a notice in the form attached hereto as Exhibit A, and five copies of this brief, addressed to Messrs. Guggenheimer, Untermyer & Marshall, 120 Broadway, New York City, New York, the proper address of the counsel appearing specially for Appellee, duly postpaid, and that by due course of mail the said letter would reach the said counsel for Appellee on November 14th (next legal day), 1921.

POWELL CRICHTON.

Sworn to and subscribed before me
this 12th day of November, A. D. 1921
MEDORA GAUGGEL,
Notary Public.
(Seal) My Commission Expires March 30, 1923.

Exhibit A.

Nov. 12, 1921.

MESSRS. GUGGENHEIMER, UNTERMYER & MARSHALL,
Esqs.,
120 Broadway,
New York City, N. Y.

Dear Sirs:

Please take notice that on Monday, December 5th, 1921, we will present to the Supreme Court of the United States, in the Matter of Minna Lombard Crichton *vs.* Maggie L. Wingfield, the motion of which the enclosed is a copy. We also hand you herewith five copies of the brief which will be presented with the motion.

Yours respectfully,
THOMAS B. FELDER,
Counsel for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1921

No. 312

MINNA LOMBARD CRICHTON
Appellant

vs.

MAGGIE L. WINGFIELD
Appellee

STATEMENT OF FACTS, ASSIGNMENT OF ERRORS AND BRIEF FOR APPELLANT

Statement of Facts

The appellant is a resident citizen and inhabitant of Bronxville, in the County of Westchester, State of New York, within the territorial jurisdiction of the District of the United States for the Southern District of New York.

The appellee is a resident citizen of Clarksdale, in the County of Coahoma, State of Mississippi, within the territorial jurisdiction of the District Court of the United States for the Northern District of Mississippi.

The appellant is the daughter and sole surviving heir at law of Ephriam H. Lombard and Eva

W. Lombard, now deceased. The mother died first, on May 25th, 1919, in Coahoma County, Misssissippi. The father died on November 3rd, 1919, at the residence of the daughter in Bronxville. Both parents died testate.

While the parents were living in Mississippi, they acquired a cotton plantation in Sunflower County, named "Lombardy," each owning about equal parts thereof. Shortly prior to January 1st, 1917, they contracted to sell the plantation to one Corley. The sale was made largely on a credit, and the final instruments consummating the sale were executed on January 1st, 1917. To evidence the balance due for deferred purchase money payments, the owners took from Corley a series of negotiable commercial obligations in bond form, all secured by mortgage or deed of trust, and all payable to "*Eva W. and E. H. Lombard, or bearer,*" drawn to mature in equal annual installments over an extended period of ten years; and to represent the annual interest upon these principal obligations, the vendors took from Corley ten separate interest obligations of similar form and similarly payable as were the principal obligations, the interest obligations being attached thereto, representing the interest payable annually at the rate of six per centum per annum, upon the annual total outstanding balance of purchase money.

Each of the ten principal obligations was for the sum of Thirty-one Thousand Four Hundred and Eighty Dollars, drawn to mature on the first day of January, 1918, and annually thereafter, to and including January 1st, 1927, and the first obligation for the annual interest on the whole debt was Eighteen Thousand Eight Hundred and

Eighty Dollars, drawn to mature on January 1st, 1918. Thereafter, these obligations were diminished in amount in accordance with the anticipated annual reduction of the principal obligations; but all the obligations, both principal and interest, were written to bear interest at the rate of six per centum per annum after maturity.

Transcript, pages 1-2, 40-41

These obligations were, by operation of law, secured by a vendor's lien for purchase money, and this security was made more effective by the execution by Corley of a mortgage or deed of trust on the plantation lands, which provided for a foreclosure by a sale *in pais*, instead of through a proceeding in equity.

Transcript, pages 39-43

After the sale of the plantation appellant's parents acquired a homestead in Bronxville, to be near their daughter, and that was the only permanent place of residence which either thereafter had. This homestead was devised to Mr. Lombard by Mrs. Lombard, by the eighth clause of her will.

Transcript, page 33

After the "Lombardy" sale, the Lombards had no home in Mississippi. They lived in Bronxville, as stated; they traveled; and coming to the year of the death of the two, it appears from the transcript that Mrs. Lombard during the winter and spring preceding her death, had been with her husband in Florida, and that from Florida, her husband and she both went for a visit to her cousin, John H. Sherard, at Sherard, Mississippi, the site

of Mr. Sherard's plantation home, within a short distance of Clarksdale. It appears that she died there, and that Mr. Lombard remained at the home of Mr. Sherard, or with the appellee, until he returned to Bronxville, early in August, 1919, and that he remained in Bronxville until his death, at the home of his daughter, in November, 1919.

Transcript, pages 44-50

The whole series of unpaid Corley obligations, in 1919, were in the possession of Mrs. Lombard. From June, 1918, to the date of Mr. Lombard's death, he was physically and mentally incapacitated for the transaction of business. This fact is manifest from the statement of Doctor Brock McGeorge Dear. An extended statement of his condition during that time, appears at pages 55 and 56 of the transcript.

In April, 1919, with the consent of Mr. Lombard, the Corley obligations and mortgage were taken from a bank safety deposit box that belonged to Mrs. Lombard, but the key of which had been held by Mr. Lombard, and had been given to the appellant by him, and all of these papers, including those in controversy, were given to appellant, and she took them with her from Mississippi to Bronxville, New York, where they were placed on deposit with the Gramatan National Bank, and there the papers have remained in possession of the appellant, except as placed on deposit with the Clerk of the District Court of the United States for the Southern District of New York, under the order of the Judge who heard this cause.

Under the will of Mrs. Lombard, with the exception of a few small bequests, the appellant was

the ultimate principal beneficiary. The record shows that all the debts of the decedent had been paid.

Under the will of Mr. Lombard, the appellant was the chief beneficiary, excepting a bequest of Ten Thousand Dollars to the appellee. All the debts of Mr. Lombard have been paid, except a small indebtedness secured by a mortgage for purchase money on lands situated in Florida, and with the exception that the inheritance taxes on the estates have not been entirely liquidated.

While Mr. Lombard was temporarily in Mississippi, and in the home of appellee, and while the securities above mentioned were in the possession of appellant in New York, the record shows that he was induced to sign what purports to be an assignment of a *one-half interest* in six of the Corley principal obligations secured by mortgage aggregating *Ninety-four Thousand Four Hundred and Forty Dollars*, and *all of the* following described interest obligations, to wit: Those maturing from January 1st, 1921, to January 1st, 1926, aggregating *Fifty-two Thousand Eight Hundred and Eighty-six and 40/100 Dollars.* This paper purports to have been executed on August 1st, 1919, and appellant learns has since been placed of record in Sunflower County, Mississippi. A copy thereof appears at page 6 of the transcript.

The alleged assignment was not accompanied by any actual or constructive delivery by Mr. Lombard to the appellee, of any of the securities undertaken to be embraced therein. Appellant was not informed of the execution of this instrument until a considerable time after the death of Mr. Lombard.

She had, in the meantime, since the death of her parents, been in undisputed possession of the se-

curities, embracing the obligations and the mortgage or deed of trust above mentioned, basing her right and title to the possession and ownership thereof upon the fact that she was not only the legatee thereof under the respective wills of her parents, but also because of the fact that she was the sole surviving heir at law of each of them.

Being advised of the claim of appellee to an interest in by far the larger part of the obligations and securities, and finding that this claim of the appellee cast a cloud, doubt and suspicion upon her true and real title to all of the said securities, she proceeded under the provisions of Section 57 of the Judicial Code, to file a suit in the District Court of the United States for the Southern District of New York, within the territorial jurisdiction of which court the securities above mentioned were located and held, for the purpose of removing the cloud upon her title to the said property arising out of the claim of the appellee, based upon the alleged assignment heretofore stated.

The proceedings under Section 57 of the Judicial Code were regular throughout, and process was executed upon the defendant in the manner provided by law.

Upon the return of process, the appellee appeared specially, for the purpose of moving to quash the process, and to dismiss the bill because of the averment in the motion "that this case is not one which comes within the provisions of Section 57 of the Federal Judicial Code," and, therefore, that the Court had not acquired jurisdiction of the subject matter of the action and was without power to proceed therein.

On the hearing, in support of the motion, appellee presented several *ex parte* affidavits regarding certain dealings with the property in con-

troversy, and as to certain sales of the "Lombardy" property after the Corley purchase, copies of various records, including copies of the wills of Mr. and Mrs. Lombard, and the orders of probate thereof, a copy of a Mississippi statute as to certain personal representatives removing personal property from the State, and a certificate from the Chancery Court Judge that he had not authorized appellant to remove any of the property in question from the State, and that final accounts as executrix had not been filed by appellant.

Appellant filed answering affidavits, dealing with the mental and physical conditions of her parents, the dates and places of their respective deaths, her perfectly legal undisputed physical possession of the property in Bronxville, before the death of each parent, continued without interruption to the present time, and the circumstances under which the alleged assignment had been secured by appellee.

On the presentation of the motion to vacate the service and quash the process, appellee sought to enlarge the scope of the motion, *arguendo,* by contending in addition, that appellant's removal of the property from Mississippi was in violation of the State statute and wrongful, and that appellant had not come into equity with clean hands, and, therefore, an equity court would repel her.

While neither of these propositions was maintainable as a matter of fact, and while they were not germane to the motion, and while they involved matters which, if even they could be considered by the District Court of New York, could be considered only on a hearing on proof, still the Court did consider them, adjudged thereon

adversely to appellee, and eliminated them from all consideration in determining the pivotal motion to dismiss because the securities in controversy are not personal property under the provisions of Section 57.

Court's opinion, decree and certificate, Transcript, pages 59, 67, 69

The decree of dismissal having been final, this appeal is sought to correct the error of which the appellant complains.

ASSIGNMENT OF ERRORS

Filed April 9, 1921.

MINNA LOMBARD CRICHTON
Plaintiff
vs.
MAGGIE L. WINGFIELD
Defendant

And now comes the plaintiff in the above entitled cause, and files the following assignment of errors upon which she will reply in her prosecution of the appeal in the above entitled cause, from the decree made by this Honorable Court on the 9th day of April, 1921.

FIRST: The Court erred in dismissing the bill, after hearing upon the bill and motion to dismiss.

SECOND: The Court erred in refusing to maintain jurisdiction of the above entitled cause.

THIRD: The Court erred in dismissing the bill in the above entitled cause for lack of jurisdiction.

BRIEF AND ARGUMENT

Jurisdiction on Appeal

The opinion and certificate of the distinguished District Judge and the order of the Court dismissing the appellant's bill, settle the question of the jurisdiction of this Court. Nothing else was considered as determinative of the issues presented by the pleadings. The decision was based on jurisdiction alone.

Transcript, pages 59, 67, 69

The appeal has, therefore, been properly prosecuted directly to this Court.

Jellenik *v.* Huron Mining Co., 177 U. S. 1;
Chase *v.* Wetzlar, 225 U. S. 79.

The Action a Code Proceeding

The proceeding in its entirety is based on the provisions of Section 57 of the Judicial Code.

For the sake of convenience, a copy of the section is embodied herein as follows:

> "When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer or demur

by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In case such absent defendant shall not appear, plead, answer or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same State, such suit may be brought in either district in said State: PROVIDED, HOWEVER, That any defendant or defendants not actually personally notified as above provided may, at any time within one year after final judgment in any suit mentioned in this section, enter his appearance in said suit in said district court, and thereupon the said court shall make an order setting aside the judgment therein and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be

proceeded with to final judgment according to law."

The controversy stated in appellant's bill, relates exclusively to removing clouds from her title to certain personal property then actually present in the district from which the appeal has come, growing out of the assertion of an adverse claim thereto by appellee.

The court of original jurisdiction, stated in the certificate of the trial judge, denied the right of appellant to maintain her action, "solely because the case made by the bill and evidence showed the property involved was promissory notes present in this district, but which were payable out of the district by parties who did not live in this district, and that such notes did not constitute personal property within the district under Section 57 of the Judicial Code."

Transcript, page 69

The application, effect and operation of this provision of the Code, are all that present themselves for determination on the facts shown in the record. This situation narrows the questions under review to a consideration of what the property in controversy really is, and whether its character is such, under the precedents, as to warrant the maintenance of an action under Section 57 of the Code, if all other essentials to maintaining such an action exist.

The Character of the Property

The controlling facts are shown by the pleadings and their legal effect is not affected by any ex-

traneous facts as to which the parties are agreed, as extracted from the *ex parte* affidavits presented by them. The admission of affidavits does not establish as facts, assertions by an affiant which are the mere conclusions of law of the affiant, as, for instance, the conclusion stated with respect to the Corley trust deed, that subsequent vendees from Corley, the original vendee of the Lombards, and others taking from them, "assumed the payment of the notes mentioned and set out in said trust deed, and that said notes are to be paid by them."

Whether there were assumptions, or purchases subject to prior encumbrances, is not known; but in either event, whatever may be the facts, they are not dominant in the decision of this case. The *undisputed* facts are that the obligations under discussion are negotiable securities binding upon and made payable primarily, by a man living in Colorado, at a bank in Mississippi.

Other considerations excluded, necessarily we then revert to the question, Are these securities personal property? It is certain that whether they are, or not, does not depend, in any sense, upon the place of residence of any party to any such securities, either as maker, endorser, guarantor or as one who may have assumed an obligation.

Their character cannot be fixed by the circumstance of the chance residence of creditor or debtor. The obligations being valid, the owner holding them at his domicile, may not desire to enforce payment, or indeed, the securities may not be presently collectible, or the owner may be perfectly content to carry them for a change in the horizon; but nevertheless, other jurisdictional

facts existing, he may desire to rest in peace and clear his title to the property by pursuing in the *forum* of his residence, the remedies provided for his relief by the terms of the section we are considering, against all persons who may claim a lien thereon, or whose conduct may cast a doubt or suspicion upon his ownership. His right to resort to the District Court of his residence for relief is not to be curtailed by the weighing of the question as to whether that court, otherwise clothed with jurisdiction, is to be shorn of its power, because it might not happen to be vested with the further power to enforce payment, when that may not be desired.

There is here no question of attachment or garnishment. This suit does not involve the question of suing a debtor. The controversy here is between two persons claiming to be *creditors*, each seeking to have her right declared paramount to the right of the other, and neither of them seeking any relief as to any debtor or debtors whether obligated primarily or secondarily.

The Securities Have Become Vested With the Attributes of Personalty

The statute we rely on uses words of ordinary meaning and signification for the accomplishment of justice.

The District Courts of the United States are vested with juirsdiction to enforce legal and equitable liens upon, or claims to, or to remove encumbrances, liens or clouds upon the title to real or personal property within their respective districts.

There is no suggestion in the statute of any requirement, or meaning to be attached to any word

that it uses, to defeat the expansion of a jurisdiction that under certain circumstances, had already existed.

The term "'personal property" was designed to mean just what it means in the several states where the exercise of the jurisdiction might be sought, that is, it is an inclusion of all personal property of all kinds regardless of bulk, or particular spatial occupation.

At any rate, it embraces securities like the mortgage or deed of trust involved in this case, with the accompanying negotiable obligations described therein.

This Court has given a definition and comprehensive meaning to the term, as follows:

> "A learned argument is made to the effect that the stock certificates, bonds and mortgages are not property; that they are but evidences of the ownership of interests which are property; that the property, in a legal sense, represented by the securities, would exist if the physical evidences thereof were destroyed. But we are of opinion that these refinements are not decisive of the congressional intent in using the term 'property' in this statute. Unless the contrary appears, *statutory words are presumed to be used in their ordinary and usual sense, and with the meaning commonly attributable to them.* To the general understanding, and with the common meaning usually attached to such descriptive terms, bonds, mortgages and certificates of stock are regarded as property."
>
> De Ganay *v.* Lederer, 250 U. S. 376.

In the place of the residence of the appellant, the term has a fixed signification which embraces the securities we have here before the Court.

The statute law of New York on the subject is as follows:

> "Section 39, General Construction Law, Law 1919, Chapter 27: (This Section was Statutory Construction Law, Law 1892, Chapter 677, Section 4 pt., and Law 1883, Chapter 372, Section 1.) **Property, Personal.** The term 'personal property' includes chattels, money, things in action, and all written instruments, themselves, as distinguished from the rights or interests to which they relate, by which any right, interest, lien or encumbrance in, to or upon property, or any debt or financial obligation is created, acknowledged, evidenced, transferred, discharged or defeated, wholly or in part, and everything except real property which may be the subject of ownership."

The State of Mississippi, the place where the securities were executed and are payable, has a similar statute as follows:

> "Mississippi Code 1906, Section 1591: The term 'personal property,' when used in any statute, shall include goods, chattels, effects, evidences of rights of action, and all written instruments by which any pecuniary obligation, or any right, title, or interest in any real or personal estate, shall be created, acknowledged, transferred, incurred, defeated, discharged, or diminished."

This recognition by the statutes of the States of New York and Mississippi indicates that the common law notion that pecuniary obligations like those before the Court are the evidence only of a debt, has passed away in both States, and also in many others where similar statutes have been enacted. This disregard of the common law idea

has been upheld by the United States Supreme Court in the case of

Wheeler *v.* Sohmer, 233 U. S. 438,

where there were mortgage notes belonging to a Connecticut decedent, kept in New York, payable by an Illinois debtor, and secured by Illinois real estate. The State of New York was permitted to impose an inheritance tax on these notes, by reason of the above definition of "personal property" within the State of New York.

A similar statute has been recognized by the United States Supreme Court in the interpretation of Section 57 of the Judicial Code, in the case of

Jellenik *v.* Huron Copper Mining Co., 177 U. S. 1,

where the State of Michigan had a similar statute making certificates of stock personal property. The United States Supreme Court held that they should be deemed personal property, within the meaning of Section 57 of the Judicial Code.

The highest courts in the State of New York have recognized the statute as abrogating the common law character and attributes of these securities, and classes them as tangible personal property, and no longer as the mere evidences of debt.

In Matter of Bronson, 150 N. Y. 1, Mr. Justice Vann said, at page 15:

> "It is difficult to conceive a definition more comprehensive than this, for it includes intangible property as well as tangible, written instruments, as such, and everything except real property, that is capable of being owned or transferred."

In People *ex rel* Westbrook *v.* Board of Trustees of Village of Ogdenburgh, 48 N. Y. 390, Mr. Justice Earl said, at page 397:

> "Notes, bonds and other contracts for the payment of money have always been regarded and treated in law as personal property. They represent the debts secured by them. They are subject to larceny, and a transfer of them transfers the debt. If this kind of property does not exist where the obligation is held, where does it exist? It certainly does not exist where the debtor may be, and follow his person."

In the case of People *ex rel* Jefferson *v.* Smith, 88 N. Y. 576, Mr. Justice Earl said, at page 585:

> "It is clear from the statutes referred to, and the authorities cited, and from the understanding of business men in commercial transactions, as well as of jurists and legislators, that mortgages, bonds, bills and *notes* have for many purposes come to be regarded as property, and not as the mere evidences of debts, and that they may thus have a *situs* at the place where they are found, like other visible, tangible chattels."

In the case of Yazoo & Miss. Valley R. R. Co. *v.* Adams, 181 U. S. 580, it was said by this Court:

> "The settled rule of this court is that even in a case where we may exercise an independent judgment, any reasonable doubt would be resolved in favor of the construction of the State statute which has been adopted by the court of last resort of the State."

It is a fundamental principle of this Court that the interpretation and construction placed by the

highest court of a State upon its statutes, are conclusive upon this Court.

> Smiley *v.* Kansas, 196 U. S. 447;
> Hibben *v.* Smith, 191 U. S. 310;
> Lindsley *v.* Natural Car Gas Co., 220 U. S. 61.

The State of New York, like the State of Mississippi, has also recognized these obligations as personal property by permitting their attachment, their replevin, levy thereon, and their sale under execution, all irrespective of the domicile of the maker or holder. They are, also, in both States, declared to be personal property for the purpose of conferring jurisdiction upon a Surrogate's Court.

In the case of Johrer *v.* Roscoe, 62 Miss. 699, notes, themselves, were held to be personal property when situated in Mississippi.

It has also been held that a voucher for the payment of money due, is personal property in Mississippi, *when present* in Mississippi.

> R. F. Walden & Co. *v.* Yates, 111 Miss. 631.

Numerous other decisions are to be found, especially among the more recent cases, wherein the courts have considered bonds, notes and other forms of obligations, as constituting not merely evidences of debt, but as property itself; thereby classifying them as tangible chattels having an actual *situs* determined by their physical locality.

Mr. Justice Holmes, in Blackstone *v.* Miller, 188 U. S. 189, at page 206, says:

> "Bonds and negotiable instruments are more than merely evidences of debt. The debt

> is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions."

Mr. Justice Brewer, in New Orleans *v.* Stempel, 175 U. S. 309, at pages 322 and 323, says:

> "It is well settled that bank bills and municipal bonds are in such a concrete, tangible form, they are subject to taxation where found, irrespective of the domicile of the owner. Notes and mortgages are of the same nature; and while they may not have become so generally recognized as tangible, personal property, yet they have such a concrete form that we see no reason why a state may not declare that if found within its limits, they shall be subject to taxation." Cited in Bristol *v.* Washington County, 177 U. S. 133-141; State Board of Assessors *v.* Comptoir National d'Escompet, 191 U. S. 388-403, 404; Metropolitan Life Insurance Co. *v.* New Orleans, 205 U. S. 395, 400, 401, 402.

In the case of Wheeler *v.* Sohmer, *supra*, this New York statute was before the Court, and it was held to be plainly within the power of the State of New York to pass such a statute.

Cooley on Taxation, 3rd Edition, at page 87, says that the maxim *mobilia sequuntur personam* does not rest on any constitutional foundation, and gives way before express law.

It would seem that there is absolutely no doubt that the States may define what is property within their domain.

Chaplin, in his book on Principles of Federal Law, page 349, Section 446, says:

> "Within the degree of elasticity known to the common law, in respect of particulars of property-title, the Federal organic law of

> property leaves to the legislative and to the judicial authorities, respectively, of the States, severally, power of particulars of the definition of property, and confines itself to the definition and guarding of those limits."

The Statute Construed by United States Courts

The courts of the United States have been called on frequently to construe and apply this statute, and the like statute that preceded it.

The general law is that negotiable promissory notes are personal property subject to be levied on and sold by the processes of attachment and execution.

> Fishburn *v.* Loudenshausen (Oregon), 92 Pac. 1060; 14 L. R. A. (N. S.) 1234.

That rule should support jurisdiction in this case. The very question of whether securities like those here presented for consideration, come within the definition of "personal property" under identically this statute, has several times been before the Federal Courts, and jurisdiction has been maintained.

In Manning *v.* Berdan, 132 Fed. 382, a defendant claimed that a note was not personal property but only a promise in writing, and merely evidence of a debt owing by its maker. At page 386, Justice Lanning says:

> "A promissory note is something more than a mere written promise. It is a negotiable instrument. It is recognized by the law merchant as property. The transfer of title to a debt is evidenced by a transfer of title to the note. Manning's note for $51,250

> is 'personal property' in the same sense that his bond for $51,250 would be, and in the same sense that bonds of the United States for the same sum would be."

Another case is that of Pensacola State Bank *v.* Thornberry, 226 Fed. 611, where the Circuit Court of Appeals, Sixth Circuit, refused to recognize jurisdiction under Section 57 of the Judicial Code because a note was not actually within the district where the suit was brought. Quoting Sanford, J., at page 617:

> "However, both when this suit was commenced and the appearance order was served on the defendants, the note, which was the subject of the suit, was not in the Illinois district. And we are of opinion that it cannot be deemed to have been constructively within that district upon the theory that its *situs* followed Scudamore, as legal holder; especially as he had previously pledged the note to the plaintiff, which was then its legal holder, so far as he was concerned, so that its legal *situs*, upon this theory, would have been in the State of Florida. Accordingly, as neither its physical nor legal *situs* was in the Illinois District, the note cannot be deemed to have been within that district, within the meaning of the Act of 1875, either when the suit was commenced or the appearance order was served on the defendant."

A further case is Thompson *v.* Emmett Irrigation Dist., 227 Fed. 560.

See, also,

Hodgman *v.* Atlantic Refining Co., 274 Fed. 104.

Under a statute similar in import and effect to Section 57 of the Judicial Code, in the case of Jones *v.* Rutherford, 26 App. D. C. 114, in dealing with the question of whether a draft or check could be regarded as personal property, so as to give jurisdiction to the District Court, the court decided that jurisdiction existed, and in the course of its opinion stated the following to be the law:

> "Now why should it not be regarded as personal property? It is drawn here by the Treasurer of the United States; it is *physically present* here; it has no other *situs*. It is true it may be made payable elsewhere, in New York, or New Orleans, or San Francisco, or any other place where it may suit the claimant and the officers of the Government; but it is not apparent how *any such circumstance* as that can affect the character of the paper as *personal property in this district*, which is *physically present* here. * * * The question is whether that draft is property within the District of Columbia *as between two rival claimants* for the possession of it. The possession of this draft is the matter in controversy between the parties, and we are of the opinion that it is property within this district."

From our understanding of this case, it settles the two pivotal points in controversy against the appellee. The one is that the draft or paper in question was not merely evidential of the debt, but was in and of itself personal property; and the other is that the *situs* of that property is not determinable by reason of the *place of payment* thereof, but the fact of the physical presence of the paper in the district, determines its *situs*, and thus vests jurisdiction in the court where it is, to

settle the rights of "two rival claimants"—as in this case.

This court, in the case of Chase *v.* Wetzler, 225 U. S. 79, refused to consider bonds as constructively in the State of New York where executors, appointed in New York, had taken them to Germany.

According to the same rule, the present negotiable securities can not be deemed to be constructively in the State of Mississippi, because the plaintiff, as the executrix of the estates both of her father and of her mother, undeniably, after her appointment, has never taken the notes to Mississippi.

The actual presence of the securities within the jurisdiction of the court, is essential to the maintenance of an action to cancel liens thereon, or to remove clouds from the title.

For instance: In the case of Cocke *v.* Brewer, 68 Miss. 775, notes were held and claimed by residents of Tennessee. Service by publication was made on them in an action brought in Mississippi to test the question of ownership. The notes were secured by a trust deed on land in Mississippi, and the debtor-maker, resided in Mississippi. The Mississippi court refused to entertain jurisdiction because the notes were not within the State, and therefore, the court held it did not have jurisdiction of the *res*. The Mississippi court did not consider it sufficient that the debtor resided in Mississippi, and that the notes were payable in Mississippi, but considered the evidence of the indebtedness as the *res*.

It is, therefore, respectfully submitted that under the law in Mississippi, even though the facts were that all the debtors reside therein, which is

not true, and that the obligations which are the basis of the action are payable in Mississippi, this concurrence cannot operate to transport for any purpose, their *situs* to the State of Mississippi. It was error for the trial Judge to hold that there was a theoretical transportation of the *situs* of the securities from New York to Mississippi, because the securities are payable there, and by such a forced fiction of the law defeat a jurisdiction that is well grounded on the statute.

The Mississippi decision referred to in the court's opinion—McIlvoy *v.* Alsop, 45 Miss. 365—was the case of a recalcitrant foreign administrator interfering with the orderly administration of an estate by a Mississippi administrator, of property in that State, and the court simply announced the rule, that if the debtor paid his debt to the domestic administrator, the court would decree his protection from loss because of such a proper payment. The facts of that case are foreign to the facts of this, and that decision does not affect the decision of this case.

Finally, Prof. Beale, unquestioned authority on the conflict of laws, clearly supports the proposition which we advance, that the *situs* of the securities is where the paper is found. In his Conflict of Laws, Vol. 3, page 507, he says:

> "A chose in action may, however, be evidenced by a document which is of value in itself, and is marketable. In such case, the territory in which the document is found, has power over the document, and to that extent, over the chose in action."

We have not heretofore adverted to the fact that notes and bonds are the same character of property, whether they be secured by mortgage

or not. They are in substance, one and the same thing, and embody identical obligations.

A note calls for the payment of money. In the same way, "in its ordinary commercial sense, the term 'bond' signifies an obligation to pay money. Such a bond contains a promise to pay money, usually to bearer, and hence is negotiable and is transferable by delivery."

> Sweetsir *v.* Chandler, 98 Me. 145; 56 Atl. 584.

Where a testatrix disposed of a part of her property by will, and the codicil made a bequest of all her bank stock and bonds, it was held that the notes owned by the testatrix passed as bonds.

> Schoonmaker *v.* Mitchell's Admr., 144 Ky. 794; 139 S. W. 968.

In the discussion of this statute by the courts of the United States, no distinction is made between notes, bonds and other classes of securities, but from the cases, it will be observed that they are all treated, indiscriminately, as personal property.

The Action not Personal but in Rem

The District Court erred in holding that it had no jurisdiction in this particular action.

This is an action *quasi in rem*. Its object is to determine title to personal property actually located in the State of New York. The question of collecting the notes is in no way involved.

In Jellenik case, *supra*, the question of title and of the ownership of certain stock certificates was involved.

Equity has frequently acted in similar cases, where the rightful owners of stock in a corporation, have asked to have spurious issues cancelled. For similar cases, see:

Ampro Mining Co. *v.* Fidelity Trust Co., 76 N. J. Equity 555, 557;
N. Y. & N. H. R. R. Co. *v.* Schuyler, 17 N. Y. 592.

Section 57 of the Judicial Code provides the same remedy for an action to cancel a cloud on title to real estate, as it does a cloud on the title to personal property.

A cloud on the title to personal property was removed in the case of Thompson *v.* Emmett Irr. Dist., 227 Fed. 560.

Similar relief was granted in the case of Citizens Savings & Trust Co. *v.* Ill. Cent. Ry. Co., 205 U. S. 46.

In the case of L. & N. R. R. Co. *v.* Western Union Tel. Co., 234 U. S. 369, a fraudulent deed was cancelled where the defendant did not live in the same state where the real estate was situated.

Procedings *in rem* may be, and often are maintained with respect to personal chattels, declaring the paramount right to them.

Freeman *v.* Alderson, 119 U. S. 185;
Arndt *v.* Griggs, 134 U. S. 316;
Hamilton *v.* Brown, 161 U. S. 256.

The extended scope and application of the statute in the granting of relief like that sought in

this action are seen in the many cases where its construction and application have been involved.

Greeley *v.* Lowe, 155 U. S. 58;
Dick *v.* Foraker, 201 U. S. 404;
Goodman *v.* Niblock, 102 U. S. 556;
Mellen *v.* Moline Iron Works, 131 U. S. 352.

The present action is in no way, one *in personam*. No personal judgment is sought against the defendant. The object of plaintiff's bill is to have her title to and ownership of the securities adjudicated, and as essential to granting her full relief, to have the alleged assignment to the defendant cancelled as a cloud upon her true title to the property.

Pomeroy, in his Equitable Remedies, Vol. II, Section 29, at page 1228, says that the instances are not infrequent where clouds on title to personal property have been removed, and gives as an example, the case of void, recorded chattel mortgages.

Sherman *v.* Fitch, 98 Mass. 59.

At Section 740, Pomeroy says that, "the action is a clear instance of those suits *quasi in rem*, in which substituted service may be authorized." And at Section 743, he states the rule, "That the decree fixes and settles the title, and to that extent, partakes of the nature of a judgment *in rem*."

An action to remove a cloud on the title to personal property is not an unusual one. It has been repeatedly held that such an action is within the jurisdiction of equity.

6 Pomeroy's Equity Jurisprudence, Sec. 729;

Sherman *v.* Fitch, *supra;*
Voss *v.* Murray, 50 Ohio State 19;
Rosenbaum *v.* Foss, 4 S. D. 184;
Lewen *v.* Stone, 3 Ala. 485;
Stebbins *v.* Perry County, 167 Ill. 567;
Erle *v.* Maxwell, 86 S. C. 81.

In the case of Magnuson *v.* Clithero, 101 Wis. 551, a plaintiff, in possession of notes secured by a mortgage, to which she claimed title, was allowed to bring a bill in equity and serve a defendant outside the jurisdiction, by publication, in order to quiet plaintiff's title to the property. The action was in the nature of a *quia timet proceeding.*

The statute has been construed, in the case of McBurney *v.* Carson, 99 U. S. 567, at page 569, to be "a remedial statute *and should be liberally constructed to accomplish the end in view.*"

Mr. Justice Harlan, at page 14 in the Jellenik case, says, "No reason can be suggested why suits involving the title to shares of stock of a corporation, or company, should have been excluded from the operation of the statute."

The present case is not like the case of a state court attempting to obtain service on a non-resident by publication; but is, instead, a proceeding where through the proper service of a Federal process, expressly provided by Federal statute, Section 57 of the Judicial Code, the court is authorized on final hearing, to render a decree, supported by the evidence, which will operate upon property actually within and subject to the physical power of the court.

The State of Mississippi, and the State of New York, are under the same sovereignty,—that of the United States of America, and Congress has

authority to provide for the service of such process.

In England, there is a statute providing for process in an English Court, to bring a resident of the Isle of Man before that Court.

Jackson *v.* Spittall, LR 5 C. P. 542;
Vaughan *v.* Weldon, LR 10 C. P. 47.

It is a fundamental principle that the courts of a Sovereign may be empowered to determine the title to chattels.

Wilson *v.* Graham, 30 Fed. Case #17804.

In the Jellinik case, *supra*, an appeal was taken direct to the Supreme Court, where the Circuit Court had held that shares of stock of a corporation were not personal property in the district. The sole question was whether the subject matter was located in the district. The defendants who claimed ownership of the stock, resided outside of the district. This court held that the shares were personal property in the district, and pointed out that this statute contemplated the inclusion of cases involving title not only to tangible personal property, but other kinds of personal property not tangible, and not in the actual, manual possession of any person.

In the present case, the appellee's alleged assignment was of certain specific written obligations and of an undivided interest in others of like character, all of which particular writings were located in the Southern District of New York at the very time the alleged assignment is claimed to have been made. There can be no doubt but that if this writing was secured as appellant

charges, it is a cloud upon her title to the bearer obligations and the mortgage security she holds. These instruments have been deposited with the court, and are thereby subject to the dominion and resulting control of the court.

It is not necessary to argue that the writings obligatory are constructively in New York. There they are. In the case of Chase *v.* Wetzler, *supra*, the bonds were actually in Germany. If the bonds had been in New York instead, the court would then have taken jurisdiction, as the jurisdictional facts would then have existed as they do in this case.

There is no question, here, of the liabilities of the debtors, but solely the question of ownership of these particular securities. So far as the debtors are concerned, it is immaterial to whom they may make payment, and so far as the jurisdiction of the court is concerned it is immaterial if they never pay.

The Opinion of the District Court

Regardless of these considerations, and of the further fact that the finding of the District Court on the facts was otherwise favorable to appellant throughout, the court nevertheless reached the conclusion that the bill should be dismissed.

Such a conclusion is in conflict with all the decisions heretofore rendered by the courts of the United States in the interpretation and application of the statute. It would seem that the conclusion reached by the court must have arisen because of a confusion and misapplication of recognized rules of law, and we submit that this will manifest itself from an examination of the opin-

ion rendered in the case. We contend that the conclusion which was reached is clearly a *non sequitur* from the particular premises assumed by the court upon which to base the decision.

The opinion shows that the court did a dangerous thing when it grounded its decision and wrote the opinion shown by the record, upon an isolated phrase excerpted from its context in a sentence taken from an opinion by Mr. Justice Holmes, in McDonald *v.* Mabee, 243 U. S. 90, which states clearly the general proposition, to wit, "The foundation of jurisdiction is physical power,"—as it was in that case, where the question was as to the power of the court in a suit on a note to render a judgment *in personam*, on service by publication; and then after making that quotation, the court below erroneously joined to that quotation an extract from a part of a sentence written by Chief Justice White, in Chase *v.* Wetzlar, 225 U. S. 88, where the court announced that the statute (in question)—"exclusively deals with property which is within the district where the suit is brought, and which property is, therefore, capable of being made subject to the dominion and resulting control of the court."

It will be observed that the Chase-Wetzler case was dealing with an interpretation of the statute we are now presenting to the court, while the McDonald-Mabee case was discussing a totally different proposition. The commingling of the distinct principles announced in these two dissimilar cases, as being fully applicable to the particular facts of each, when adopted and applied by the court as the controlling basis for a decision in this case, would naturally lead to an erroneous conclusion, when considered in the light of the facts shown by this record.

The excerpt taken from the sentence in the McDonald-Mabee case states the principle applicable to the facts of that case, which are in no way related to the facts of this. It cannot be said that no court can entertain jurisdiction unless having assumed it at all, such court can exercise the physical power to thread all the mazes of judicial procedure until it has forced full and complete satisfaction of every right that may flow from the grant of the particular relief originally sought.

The announcement of the court in Chase *v.* Wetzler dealt with the interpretation of the statute we are now discussing. There the court was importuned to assume jurisdiction because of the contended constructive presence of negotiable personal property within the district, because it was said the personal property, in that case, bonds, was "within the intendment of the law, *in gremio legis*, within this district, and, therefore, within the jurisdiction of the United States Circuit Court for the Southern District of New York."

In answer to that contention, the court said: "In a case like the one at bar, the existence of the property within the jurisdiction is essentially necessary to the assertion of the power of the court to render a binding decree. The statute does not leave this to implication, since it expressly provides that the decree to be rendered shall be limited to the property within the jurisdiction which, therefore, forms the sole basis of the power to judicially act."

The court below gave this construction to the statute, and in considering the question, on appeal, as a part of the sentence from which the quotation above stated was taken, this court held that "it requires no close analysis to sustain the interpre-

tation given by the court below to the statute."

It has never been said by this court that the United States Courts could not entertain jurisdiction unless after the removal of the lien on personal property or clouds from the title of personal property, bonds in that case, the court must have "*the physical power*" to collect the bonds, or reduce to mediate or immediate possession, the money called for thereby, or that the jurisdiction did not exist because the debtor that owed the bonds was not "capable of being made subject to the dominion and resulting control of the court." We must take it that the court said all that it intended to say in each case, and that it meant all that it said in each case as applied to the particular facts of that case, and nothing more.

The expressions, "The physical power" referred to by the court, and the right to subject personal property "to the dominion and resulting control of the court," can properly relate only to the dealing by the court only with the particular character of personal property physically within the territorial jurisdiction of the court, and they relate in no way, so far as the operation of the statute is concerned, to the liquidation of any debt or obligation of any sort.

The ideas confused are that in this proceeding we are not resolving an obligation into its ultimate solution by payment, through the processes of a court, while the opinion of the court places its adverse decision on that assumption.

Furthermore: We are dealing with strictly negotiable securities; and in that view of the case, we may consider the right of the creditor to proceed *in personam* against the debtor; and we may, also, consider the right of the creditor to protect

his securities against assaults from third persons. The proceeding here is to protect the *property rights of the creditor*, against adverse claimants, and to have adverse claims removed as clouds on *her* title.

The court erroneously considered that appellant was proceeding on the first theory, and this involved the clear right given by the statute in utter confusion, and denied relief because it was considered by the court to be unattainable.

While all that was and is wanted, is a decree cancelling the cloud upon appellant's true title to property, which is now within the Registry of the Court, and completely subject to its absolute dominion and control.

The suggestion that difficulties might arise in the event of a decree favorable to appellant because of contumacious conduct from some possible source, is scarcely sufficient to retard the orderly movement of the wheels of justice. A statement that there is no right without a remedy might amply answer the suggestion.

A defect in the power to grant relief in the course of judicial proceedings seems never to have been insurmountable. This has been suggested in other cases without avail. One of the State courts was called upon at one time, to consider a suggestion of the character interposed here, and it was answered as follows:

> "It is suggested that it does not comport with judicial dignity to assume jurisdiction of a case where it is apparent that the court may be balked in its efforts to administer the law by a recalcitrant litigant. It would seem better to comport with judicial dignity for the court to proceed upon the supposition that obedience will be promptly yielded to its or-

> ders and decrees by every litigant before it, and to endeavor to find some legal method of enforcing obedience to its commands, if they shall be sought to be defied or evaded. It will be time enough for the court to abdicate its powers when it finds itself powerless to enforce its authority."
>
> Clark *v.* Equitable Society, 76 Miss. 22 at 33.

The system of jurisprudence which is represented by the United States courts could scarcely ever be called upon to meet such a contingency as has been suggested. As to matters within the jurisdiction of that court, its power and effectiveness should be coextensive with the country. The rule of law which is enforced by United States courts is that when a court has acquired the lawful jurisdiction of any specific property for any purpose, prior to the commencement of a proceeding in another court, the court of first jurisdiction will maintain jurisdiction and will exercise dominion over the property within its jurisdiction so far as necessary to accomplish the purpose of the Federal suit, free from the interference of every other tribunal.

When once a case has been begun in a Federal court, an adjudication in that case upon the merits will preclude the parties and their privies from assailing the judgment rendered by such court. In an application of the rule which we have stated, the effect of such an adjudication has been stated by the Circuit Court of Appeals of the Eighth Circuit, as follows:

> "The result is that all the issues in this case are rendered *res adjudicata* by the decree of that court which first acquired juris-

diction of the subject matter of the suit and of the indispensable parties to this litigation, and the court rightly dismissed the bill."

Mound City Co. *v.* Castleman, 187 Fed. 921; 110 C. C. A. 55.

As to the extent of the jurisdiction thus acquired, the Circuit Court of Appeals of the same Circuit has stated it broadly in the following language:

"The jurisdiction of a court over a subject matter of a cause once lawfully acquired, includes the power to enforce its judgment or decree, and to protect the title of those holding under it, from every attempt to avoid or annul it."

Lang *v.* Choctaw Ry. Co., 160 Fed. 355; 87 C. C. A. 307.

The same rule has recently been stated in the case of Berg *v.* Fidelity & Casualty Co., 274 Federal Reporter, Advance Sheets No. 3 of date October 13th, 1921.

In all of the cases cited, the opinions of the courts make reference to the decisions of Federal Courts which, in our judgment, amply support the doctrine relied upon, in its broadest application.

It would, therefore, seem as though the apprehension voiced by the learned District Judge, that a decision by the District Court of New York, favorable to appellant, might be rendered nugatory, is entirely unfounded, and it is certainly not a sound basis upon which to ground a contention that that court was without jurisdiction to grant appellant relief.

Finally

We submit our case upon the propositions That the proceeding under consideration has bee properly prosecuted under Section 57 of the Jud cial Code, so far as the pleadings and process ar concerned: That the jurisdictional facts appea affirmatively as to the residence of the parties an the physical presence of personal property in th Southern District of New York: That the pro ceeding is one *in rem*, as to property now literall in *gremio legis*:

That the District Court should have maintaine jurisdiction; and having erred in declining to d so, the decree from which this appeal is prosecute should be reversed, and the cause remanded for final hearing on the merits.

Respectfully submitted,

JOHN W. CUTRER
For Appellant

THOS. B. FELDER
Of Counsel

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Supreme Court of the United States

OCTOBER TERM—1921.

No. 312.

MINNA LOMBARD CRICHTON,
Appellant,

against

MAGGIE L. WINGFIELD,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPELLEE'S POINTS.

LOUIS MARSHALL,
JAMES MARSHALL,
Appearing Specially for Appellees.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

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Point II. Not only were these notes not personal property within the district where appellant's suit was brought, but this is not a case for the removal of a cloud upon the title to personal property within the meaning of that phrase as employed in Section 57 of the Judicial Code 37-42

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Supreme Court of the United States

OCTOBER TERM—1921.

No. 312.

MINNA LOMBARD CRICHTON, Appellant, against MAGGIE L. WINGFIELD, Appellee.	Appeal from the District Court of the United States for the Southern District of New York.

APPELLEE'S POINTS TO SUSTAIN DISMISSAL OF THE BILL FOR LACK OF JURISDICTION.

This action was brought in the District Court for the Southern District of New York, by the plaintiff, who is a citizen of the State of New York, against the defendant, who is a citizen of the State of Mississippi and resides at Clarksdale, Coahoma County, in that State, to procure an adjudication that an assignment to the defendant by the plaintiff's father, Ephraim H. Lombard, of an interest in certain promissory notes constitutes a cloud on their title claimed by plaintiff, to enjoin the defendant from asserting any claim to them, to require her to cancel and surrender the assign-

ment thereof held by her, and to restrain her from interfering with the plaintiff in their collection (*Rec.*, pages 1 to 6).

The notes referred to in the bill of complaint are fourteen in number, were executed by W. D. Corley at Clarksdale, Mississippi, on January 1, 1917, and made payable to Eva W. and E. H. Lombard or bearer at the Bank of Clarksdale, Clarksdale, Mississippi. Seven of them were for $31,480 each, and seven were interest notes given for sums aggregating $39,664.80. It is alleged by the plaintiff that these notes are physically in the State of New York (*Rec.*, page 2). Eva W. Lombard was the plaintiff's mother. Ephraim H. Lombard was her father. The defendant is his surviving sister and the plaintiff's aunt.

Paragraphs Seventh, Eighth and Ninth of the bill of complaint are as follows (*Rec.*, pages 2 and 3):

> "SEVENTH.—That plaintiff claims ownership of said notes *under the Wills of her deceased mother and father*, respectively.
>
> EIGHTH.—That shortly before the death of plaintiff's father, while he was in failing health, it is claimed by the defendant that he executed to her, the said defendant, a certain paper, a copy of which is hereto annexed, marked 'Exhibit A' assigning to her a one-half interest in all of said principal notes, Numbered 4 to 9, inclusive, and one-half of said interest notes Numbered 4 to 9 inclusive. Said notes are deferred payments on the sale of a plantation in the State of Mississippi and were executed to the father and mother of the plaintiff, and are bearer notes.

NINTH.—Plaintiff alleges that at the time the said alleged assignment was executed, her said father was of unsound mind, memory and understanding, and incapable of, and (did not sign or execute said alleged assignment, or if the same was signed by him, said Ephraim H. Lombard) did not understand or know, and was not capable of understanding or knowing that he was executing or signing an assignment of his interest in the said principal and interest notes, and that he did not intend to sign or execute any such instrument assigning his said interest to the defendant; and at said time, and for a long time prior thereto, her said father was mentally incapable of attending to any business of any nature whatever, or of making any contracts of any sort, or executing any conveyances; and the plaintiff further alleges that the said alleged assignment was obtained by the defendant through undue influence exercised by the said defendant upon her said father, and was without any consideration, and was obtained by the said defendant while she had complete control and mastery over the mind of the said Ephraim H. Lombard, who, for a long time prior thereto, had been afflicted with a disease that made him mentally incapable, which disease started on or about July 1st, 1918, and lasted up to and including the date of his death, to wit, November 3rd, 1919; and at no time during said period did plaintiff's father recover his full mental capacity."

The assignment from plaintiff's father to the defendant which is charged to constitute a cloud on plaintiff's title, forms a part of the bill of com-

plaint (*Rec.*, pages 6 and 7). It was executed and acknowledged before a notary public at Clarksdale, Mississippi, on August 1, 1919. It assigned to the defendant the interest of E. H. Lombard, in these notes. They are stated to be secured by deed of trust dated January 1, 1917, given by W. D. Corley to W. D. Cutrer, Trustee for E. H. Lombard and Eva W. Lombard, which deed of trust was duly recorded in the Records of Land Mortgages and Trust Deeds in the office of the Chancery Clerk of Sunflower County, Mississippi. The Clerk was by the terms of the instrument authorized, empowered and instructed to note on the margin of the record where the deed of trust is recorded that the assignment of the notes had been made as provided in the instrument.

The defendant has not been served with process in the Southern District of New York; but on plaintiff's application an order was made directing process to be issued against the defendant requiring her to appear in the District Court for the Southern District of New York, on January 21, 1921, the order directing the Clerk of that Court to issue and deliver a certified copy of the order and of the bill of complaint, together with the subpoena issued thereon, to the United States Marshal for the Northern District of Mississippi, commanding him to serve them upon the defendant and make known the contents of the bill of complaint to her (*Rec.*, pages 8 and 9). Such service was made at Clarksdale, Mississippi, on December 31, 1920 (*Rec.*, page 11).

Thereupon a special appearance was entered for the defendant solely for the purposes of a motion to quash the service of process attempted to be made upon her on the ground that she is a resi-

dent, citizen and inhabitant of the State of Mississippi and that the attempt to serve her in that State with process herein was without authority of law, and for a dismissal of the bill of complaint on the ground that the District Court for the Southern District of New York had not acquired jurisdiction over the defendant or over the subject-matter of this action, in that this case is not one that comes within the provisions of Section 57 of the Judicial Code or of any statute establishing the jurisdiction of the District Court. A motion was made accordingly (*Rec.*, pages 12 and 13).

It appears without contradiction that W. D. Corley, the maker of these notes, is not a resident or citizen of the State of New York, but resides in Colorado; that Eva W. and E. H. Lombard, the payees of the notes, were during their respective lives residents and citizens of the State of Mississippi; that W. D. Cutrer, the Trustee named in the deed of trust to secure the notes, was in his lifetime a citizen and resident of Coahoma County, Mississippi; that these notes were given for land purchased by Corley from E. H. Lombard, and that this land was subsequently sold by Corley to M. P. Sturdivant and J. A. May, who are residents and citizens of the State of Mississippi. Upon making the purchase they assumed the payment of these notes. Subsequently they conveyed the land to J. W. Cutrer, Oscar Johnston, Oscar Carr and W. A. Ritchie, who assumed the payment of these notes. All of them are residents and citizens of the State of Mississippi (*Rec.*, pages 15, 16, 38, 39).

It also appears that Eva W. Lombard died on May 25, 1919, a citizen and resident of Coahoma County, Mississippi, leaving a last will and testament in which the plaintiff was named as execu-

trix. On plaintiff's petition this will was admitted to probate by the Chancellor of the Second Chancery Court District of Mississippi, and the plaintiff qualified as executrix and entered upon the performance of her duties. The decree declared "that the personal property devised by the last will is all located in the said Second District of Coahoma County, Mississippi, the place of residence of said decedent at the time of her death" (*Rec.*, pages 29 to 36).

After her qualification as executrix plaintiff returned to Westchester County, New York, and took with her the notes payable to Eva W. Lombard and E. H. Lombard, without the consent of her father, who survived his wife. She not only did this, but, as shown by the affidavit of Honorable Earl Brewer, Governor of Mississippi from 1912 to 1916, she checked out the money that her father had on deposit at the bank in Clarksdale, and took from a lock-box in the bank all notes, securities, insurance policies and all other property of her father, and left him sick in bed and penniless. Her father sought to persuade her to return the property, and especially the notes which belonged to him and his wife jointly, and advised with Governor Brewer as to the course to be pursued. This resulted in the preparation of a bill in equity, but before process was served an interview between the plaintiff and her father took place and she agreed to return his property at an early day and to give him sufficient money to pay his bills and to take care of him until she returned with the property. She gave Governor Brewer, some money, which was deposited in the bank at Clarksdale, for her father, but declared that she had changed her mind and did not intend to return the property

or any part of it to Mississippi, that she had it in New York out of the jurisdiction of the courts of Mississippi, and that she was going to keep it there. Thereupon her father assigned his interest in the notes to the defendant, his sister (*Rec.*, pages 26 to 28).

Athough the plaintiff gave a conflicting version of this conversation, she admitted that the subject of the return of the notes was seriously discussed, and that she gave $500 to Governor Brewer for her father. She annexed to her affidavit a copy of a letter dated July 12, 1919, addressed by her to her father, in which she informed him of the deposit, and added:

> "I also agree with you that I will return some time *between this and January 1st and bring all your notes and papers*, and have a settlement with you along the lines we discussed to-day. I am not to turn over to you any notes until a settlement is made satisfactory to us both." (*Rec.*, page 55.)

In her affidavit, however, she gives an entirely different version of this letter, for there she says that she stated:

> "I promise to bring the notes and papers *belonging to my father* back to Mississippi whenever the settlement of the estate is made, or at the first of the year for income tax reports. Under no conditions are the notes ever to leave my possession, or the possession of my lawyer, Mr. J. W. Cutrer." (*Rec.*, page 82.)

As is shown by the bill of complaint, the assignment of the notes by E. H. Lombard to Mrs. Wing-

field was made on August 1, 1919. The plaintiff evidently heard of the execution of a document and inferred that it must be a will. She thereupon returned to Mississippi in great haste and induced her father to execute a will in her favor on August 12, 1919. (*Rec.*, pages 21, 53.)

This, in view of the allegations of paragraphs Seventh, Eighth and Ninth of the bill of complaint and of the subsequent acts of the plaintiff in connection with the will, shows beyond peradventure that if the will under which she claims these notes was a valid instrument and her father was legally competent to execute it, then the assignment made by him to the defendant, eleven days before, cannot be subject to the sole attack that is made upon it, namely, that he was afflicted with a disease that made him mentally incapable, that this disease began about July 1, 1918, and continued to and including the date of his death, November 3, 1919, and that at no time during that period did he recover his full mental capacity.

Shortly after the execution of this will the plaintiff took her father with her to Westchester County, New York, where, as stated, he died on November 3, 1919. She then returned to Clarksdale, Mississippi, with his body, interred it, and at once took proceedings for the probate of his will on November 6, 1919, in the Chancery Court of the Second District of Coahoma County, Mississippi. In her petition for probate she alleged (*Rec.*, page 17):

> "Your petitioner, Minna Ethel Chrichton, respectfully represents that on the 3rd day of November A. D., 1919, Ephraim H. Lombard, late of the Second District of Coahoma County, Mississippi, departed this life, *leaving a last will and testament duly signed, published*

and attested, as your petitioner believes, and which she, in pursuance of statute, herewith presents to your Honor for probate."

At her instance the attesting witnesses to the will were examined as to its execution by the testator, and they testified that on August 12, 1919, he "was then of sound and disposing mind and memory." (*Rec.*, pages 21, 22.) On the same day the Court admitted the will to probate, the decree reciting that it was "upon the petition of Minna Ethel Chrichton, duly verified, for the probate of a certain instrument of writing, purporting and alleged to be the true and only last will and testament of Ephraim H. Lombard, deceased, late a resident of the Second District of Coahoma County, Mississippi, and for letters testamentary thereupon." (*Rec.*, page 19.) The decree further recites that the Court, having been satisfied by proofs that the instrument propounded was the true and only last will and testament of Ephraim H. Lombard "that said decedent was at the time of his death a resident of the Second District of Coahoma County, Mississippi, *and that the personal property bequeathed and devised by the said last will and testament, is located in the said Second District of Coahoma County, Mississippi* * * * and that the lands devised by the said last will and testament are situated in Bronxville, in the City of Yonkers in the State of New York and in Florida" and that the said testator was "on the 12th day of August, 1919, of lawful age to devise, *and of sound and disposing mind, memory and understanding*, and of right and in law entitled to make said will." It was then adjudged that the will was proved and established and ad-

mitted to probate, and thereupon granted the plaintiff letters testamentary. (*Rec.*, page 19.)

It further appears from the certificate executed by the Judge of the Chancery Court of the Second Judicial District of Coahoma County, Mississippi, that the plaintiff has never received permission, either in her capacity as executrix of the Estate of E. H. Lombard or as executrix of the Estate of Eva W. Lombard, from the court having jurisdiction of the estates of E. H. Lombard and Eva W. Lombard, respectively, either in term or in vacation, or from the Judge of the Court, to remove any of the property of either of these estates out of Mississippi, and that no other person has been granted permission to remove such property out of the State. The Court further certified that the respective estates of E. H. Lombard and Eva W. Lombard have not been wound up, that no final accounting or order has been filed with respect to either of these estates, and that the plaintiff, as executrix, has not applied for her discharge and has not been discharged, and that the proceedings relating to said estates are now open and unsettled in the Chancery Court (*Rec.*, pages 24, 25).

It likewise appears that no ancillary letters of administration on the estate of E. H. Lombard have been issued by the Surrogate's Court of Westchester County, New York, although his will was recorded there, he being the owner of an interest in real estate located in that county (*Rec.*, page 38).

It is further shown that by Section 2102 of the Code of Mississippi it is provided (*Rec.*, pages 28, 29):

"Chapter 47.

Executors and Administrators.

2102. (1928) Property not to be removed from the State, and penalty therefor. An executor or administrator shall not remove any of the property of the estate out of this State. If a Chancellor or Clerk of a Chancery Court shall be satisfied, by petition or otherwise, in term time or vacation, that any executor or administrator is about to remove the property of the estate out of this State, he shall issue a precept to the Sheriff of the proper county, commanding him to seize the property about to be removed and hold the same until legally disposed of, and the letters of such executor or administrator may be revoked, on due notice, and administration de bonis non granted to some other person. And in case of such removal, suit may be forthwith instituted on the bond by any of the distributees or creditors of the estate; and, on satisfactory evidence of the removal of the property out of the State, judgment shall be rendered for the full value thereof, and such other damages as the parties suing shall have sustained."

POINTS.

I.

No property was located in the Southern District of New York, within the meaning of Section 57 of the Federal Judicial Code, which affords a basis for the exercise of jurisdiction by the District Court with respect thereto, as against the appellee, a resident and citizen of Mississippi, who was not found or served with process in that district and who did not voluntarily appear therein.

Section 51 of the Judicial Code provides:

> "Except as provided in the five succeeding sections, no person shall be arrested in one district for trial in another, in any civil action before a district court; and, except as provided in the six succeeding sections, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

The words "inhabitant," "resident" and "citizen" as used in this and the following provisions of the statute, all connate the idea of domicile. A person sued must be a resident as well as a citizen of the district in which suit is brought.

Shaw vs. *Quincy Mining Co.*, 145 U. S., 444;

United States vs. *Gronich*, 211 Fed. Rep., 548;

Pacific Mutual Life Ins. Co. vs. *Tompkins*, 101 Fed. Rep., 539.

There is nothing in any of the following sections except section 57 that is claimed to confer on the appellant the right to proceed against the defendant in the Southern District of New York. It is there provided:

> "When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In case such absent defendant shall not appear,

plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same state, such suit may be brought in either district in said state * * *."

The property from which a cloud is sought to be removed consists of twelve of the fourteen promissory notes described in the bill of complaint and are those specified in the assignment from Ephraim H. Lombard to the defendant. These notes were made in Mississippi and were payable there. The persons liable upon these notes are residents and citizens of Mississippi. The trust deed to secure the payment of these notes was executed to a citizen of Mississippi and is a lien upon property located there. The payees were likewise citizens and residents of Mississippi.

Both the plaintiff and the defendant claim title to these notes under Ephraim H. Lombard. His will

under which the plaintiff claims, and the assignment, under which the defendant claims, were executed in Mississippi. The wills of Ephraim H. Lombard and of Eva W. Lombard, under which the plaintiff seeks to deduce her title were at her instance admitted to probate in the proper Chancery Court of Mississippi, and these estates remain unsettled, the Mississippi court still retaining jurisdiction over the property belonging to both testators at the time of their respective deaths. Moreover, there are unpaid debts outstanding against both estates (*Rec.*, page 53).

It is also of significance that the notes have been taken out of the State of Mississippi by the plaintiff, without permission of the Chancery Court and in violation of the prohibition of the statute, and there is no pretense that any consent for such removal was obtained from anybody in authority. Hence the notes were unlawfully brought into the Southern District of New York.

Assuming, for the sake of the argument, that the plaintiff, in spite of her illegal acts, has valid title to her mother's half interest in the notes, there remains the question as to the title to the half interest in the notes that belonged to her father and in the debt represented by them.

Wharton, in his work on the *Conflict of Laws*, Vol., II, Section 612a. (Third Edition), lays down the proposition:

> "While for some purposes the situs of a simple contract debt is at the domicil of the creditor, its situs for the purpose of administration is at the domicil of the debtor, rather than the domicil of the creditor or the place where the evidence of the debt may be found.

> According to the weight of authority the rule applies even to debts evidenced by negotiable instruments which are not in the state of the debtor's domicil, though there is some conflict upon the point. So, the situs of corporate stock for the purpose of administration is in the state where the corporation is domiciled, and not in the state where the decedent was domiciled, or where the certificates representing the stock are found."

This rule is the basis of the decision in *Wyman* vs. *Halstead*, 109 U. S., 654, 656, where Mr. Justice Gray said:

> "The general rule of law is well settled, that for the purpose of founding administration all simple contract debts are assets at the domicil of the debtor; and that the locality of such a debt for this purpose is not affected by a bill of exchange or promissory note having been given for it, because the bill or note does not alter the nature of the debt, but is merely evidence of it, and therefore the debt is assets where the debtor lives, without regard to the place where the instrument is found or payable."

The leading Mississippi case on this subject is *McIlroy* vs. *Alsop*, 45 Miss., 365. There, a resident of Kentucky died, owning a note of a resident of Mississippi, secured by a lien on land in Mississippi. The resident of Kentucky died in his home State. The will was probated in both States and letters of administration were granted upon it to one executor in Kentucky and to another in

Mississippi. The note fell into the hands of the Kentucky executor, who retained it and insisted on the right to collect it. It was held, however, that the note was assets in Mississippi and that the Mississippi administrator was entitled to collect it, and the fact that the note, which the Court held was a mere evidence of indebtedness, was in the hands of the Kentucky executor was no bar to the right of the Mississippi administrator to collect it. The Court by Simrall, J., in the course of the opinion said (page 375):

> "There can be no doubt that whatever debt (growing out of the transactions set out in the bill) may be owing from the estate of Kinchen Exum to the estate of Jesse Alsop, it constitutes a part of the assets of the latter estate in Mississippi, and rightfully belongs to the legal representative here. The debtor resided here, the property sought to be subjected to its payment is here. McIlvoy by virtue of his appointment as adminstrator in Kentucky has no character or office as such in this state; he cannot sue in our courts. When Robert B. Alsop was appointed administrator, etc., the law charged him with administration of all the assets in Mississippi. This being a debt due here, it was his duty to take measures for its collection. The fact that the 'evidence' of the debt was in the hands of the Kentucky administrator, did not destroy its character as Mississippi assets, nor defeat his right of recovery. It might embarrass his remedy. As to McIlvoy, the *pro confesso* against him admits the allegations of the bill on this point, that Redding, the executor, in-

> ventoried the note here, and took it with him to Kentucky, and from him, as part of the papers of the estate, it came to the possession of his successor. After the note became due, it was still in McIlvoy's possession. The protection in favor of a bona fide holder for value would not inure to his assignee. No better title would pass than McIlvoy had. No right would be transferred as against the superior title of the administrator here. If McIlvoy, in dereliction of his plain duty, should persist in retaining the note, we are satisfied that the administrator here may collect the debt, the chancery court taking due precautions, for the benefit of those responsible for its payment, against the risk and danger of trouble and costs in making a defense against an assignee."

The doctrine of these cases was applied in *Buck* vs. *Beach*, 206 U. S., 392, where it was held that mortgage notes made and payable in Ohio and secured by mortgages on property in that State, the owner whereof resides in New York but which are kept for safekeeping in Indiana, are not taxable in the latter State. In the course of his opinion Mr. Justice Peckham said:

> "The sole question then for this court is whether the mere presence of the notes in Indiana constituted the debts of which the notes were the written evidence, property within the jurisdiction of that State, so that such debts could be therein taxed. Generally, property in order to be the subject of taxation must be within the jurisdiction of the power assuming to tax (page 400). The property really taxed

was the debt itself, as each separate note was taxed at the full amount of the debt named therein or due thereon. And jurisdiction over these debts for the purpose of taxation was asserted and exercised solely by reason of the physical presence in Indiana of the notes themselves, although they were only written evidence of the debts which were in fact thereby taxed (page 402).

"A distinction has been sometimes taken between bonds and other specialty debts belonging to the deceased, on the one hand, and simple contract debts on the other, for the purpose of probate jurisdiction, and the probate court, where the bonds are found, has been held to have jurisdiction to grant probate, while in the other class of debts (including promissory notes) jurisdiction has attached to the probate court where the debtor resided at the death of the creditor. 1 Williams on Executors, 6th Am. from 7th English ed., bottom paging 288, 290, note (h): Wyman vs. Halstead, Admr., 109 U. S., 654. See also Beers vs. Shannon, 73 N. Y., 292; Owen vs. Miller, 10 Ohio St., 136. Under such rule the debts here in question were not property within the State of Indiana, nor were the promissory notes themselves, which were only evidence of such debts. The rule giving jurisdiction where the specialty may be found, has no application to a promissory note. Assuming such a rule, the case here is not covered by it" (page 403).

In *Chicago, Rock Island and Pacific Railway Co.* vs. *Sturm*, 174 U. S., 710, the effect of an attach-

ment of a debt owing to Sturm by the company in a proceeding instituted against Sturm in Iowa upon an action brought by Sturm against the railroad in Kansas, was under consideration. The railroad company, which was the debtor, was a corporation organized under the laws of Iowa. The determination of the case depended upon the question whether the situs of the debt was in Kansas, the domicile of the creditor, or in Iowa, the domicile of the debtor. The State court had decided that the situs of the debt was either with the owner thereof or at his domicile or where the debt is to be paid. This Court, however, held otherwise, Mr. Justice McKenna saying:

> "The proposition is supported by some cases, it is opposed by others. Its error proceeds, as we conceive, from confounding debt and credit, rights and remedies. The right of a creditor and the obligation of a debtor are correlative but different things, and the law in adapting its remedies for or against either must regard that difference. Of this there are many illustrations, and a proper and accurate attention to it avoids misunderstandings. This court said by Mr. Justice Gray in Wyman vs. Halstead, 109 U. S., 654, 656; "The general rule of law is well settled, that for the purpose of founding administration all simple contract debts are assets at the domicile of the debtor." And this is not because of defective title in the creditor or in his administrator, but because the policy of the state of the debtor requiring it to protect home creditors. Wilkins vs. Ellett, 9 Wall., 740; 108 U. S., 256. Debts cannot be assets at the domicil of the debtor if their

locality is fixed at the domicil of the creditor, and if the policy of the state of the debtor can protect home creditors through administration proceedings, the same policy can protect home creditors through attachment proceedings. * * *

"Our attachment laws had their origin in the custom of London. Drake, §1. Under it a debt was regarded as being where the debtor was, and questions of jurisdiction were settled on that regard * * * (page 714).

"The idea of locality of things which may be said to be intangible is somewhat confusing, but if it be kept up the right of the creditor and the obligation of the debtor cannot have the same, unless debtor and creditor live in the same place. But we do not think it is necessary to resort to the idea at all or to give it important distinction. The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. To do it he must go to the domicil of his debtor, and can only do it under the laws and procedure in force there. This is a legal necessity, and considerations of situs are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. He and he only has something in his hands. That something is the *res*, and gives character to the action as one in the nature of a proceeding *in rem*. Mooney vs. Buford & George Mfg. Co., 72 Fed. Rep., 32; Conflict of Laws, §549, and notes" (pages 715, 716).

A similar question arose in *Blackstone* vs. *Miller*, 188 U. S., 189, where the question presented was

as to whether or not a deposit in a trust company in New York made by a citizen of Illinois who was domiciled in that State, was subject to the New York transfer tax upon the death of the depositor. It was held that it was, Mr. Justice Holmes saying (page 205):

> "But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. The principle has been recognized by this court with regard to garnishments of a domestic debtor of an absent defendant. Chicago, Rock Island and Pacific Ry Co. vs. Sturm, 174 U. S., 710. See Wyman vs. Halstead, 109 U. S., 654. What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law and it affords one of the motives for our conduct. So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule still applied to slander that actio personalis moritur cum persona, and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitu-

tional considerations on one side, it is plain that the right of the foreign creditor would be gone."

Under the law of Mississippi, which is the same as that announced by this Court, the property in the debt evidenced by these notes is located in the State of Mississippi. It matters not that the notes are in another state. It would not have changed the situation had the plaintiff procured ancillary letters for the administration of her father's estate in New York, for the *situs* of the debts was at the domicile of the obligors and, therefore, outside the jurisdiction of New York in the same sense and just as surely as any tangible property would be without its jurisdiction, although the evidence of title thereto (deeds, receipts, assignments, etc.) were in New York.

It further appears that the Mississippi court, in its decree which on appellant's petition admitted to probate the will of Ephraim H. Lombard (Exhibit A), affirmatively found that "*the personal propery bequeathed and devised by the said last will and testament is located in the said Second District of Coahoma County, Mississippi.*" (*Rec.*, page 19.)

A similar provision is contained in the decree admitting the will of Eva W. Lombard to probate. (*Rec.*, page 31.)

It is settled law that the mere presence within a federal district of the evidence of indebtedness does not of itself establish the right to jurisdiction under Section 57 of the Judicial Code. It is the *locus* of the rights represented by the certificate of indebtedness that controls. The cloud which it is sought to dispel must be upon those rights, and those rights must be within the district.

Jellenik vs. *Huron Copper Mining Co.*, 177 U. S., 1, was a suit brought in the Circuit Court of Michigan by citizens of States other than Michigan against a Michigan mining corporation and individual defendants holding shares of stock in that corporation who resided in Massachusetts. The plaintiffs claimed to be the real owners of the stock, the certificates of which were held by the Massachusetts defendants. Plaintiffs sought a decree removing the cloud upon their title to the shares. It was held that within the contemplation of the Act of Congress of March 3, 1875, 18 Stat., 470, c. 137 (which is the source of the present Section 57 of the Judicial Code), the stock held by the citizens of Massachusetts must be deemed personal property within the district where the corporation was domiciled. The certificates of stock, said the Court, were mere evidences of ownership. The interest represented by the shares was held by the company for the benefit of the true owner at its domicile, and the Circuit Court of the district in which such domicile was established was, therefore, possessed of jurisdiction. In the course of his opinion, Mr. Justice Harlan, after quoting from the statutes of Michigan which defined the character of the stock of a corporation organized under the laws of that State, said:

> "These provisions make it clear that by the law of Michigan the shares of stock in the defendant company are to be deemed personal property, transferable on the books of the company; and that the share or interest of a stockholder may be taken in execution or reached by attachment, a copy of the execution or attachment being left by the officer with the clerk, treasurer or cashier of the company.

The authority of the State to establish such regulations in reference to the stock of a corporation organized and existing under its laws cannot be doubted. We need not discuss, in the light of the authorities, whether the shares of stock in the defendant company may not be accurately described as chattels or choses in action, or property in the nature of choses in action. * * * It is sufficient for this case to say that the State under whose laws the company came into existence has declared, as it lawfully might, that such stock is to be deemed personal property. That is a rule which the Circuit Court of the United States sitting in Michigan should enforce as part of the law of the State in respect of corporations created by it. The stock held by the defendants residing outside of Michigan who refused to submit themselves to the jurisdiction of the Circuit Court being regarded as personal property, the act of 1875 must be held to embrace the present case, if the stock in question is 'within the district' in which the suit was brought. * * * But we are of opinion that it is within Michigan for the purposes of a suit brought there against the company—such shareholders being made parties to the suit—to determine whether the stock is rightfully held by them. The certificates are only evidence of the ownership of the shares, and the interest represented by the shares is held by the company for the benefit of the true owner. As the habitation or domicile of the company is and must be in the State that created it, the property represented by its certificates of stock may be deemed to be held by the company within the State whose crea-

ture it is, whenever it is sought by suit to determine who is its real owner."

Hodgman vs. *Atlantic Refining Co.*, 274 Fed. Rep., 104 proceeds on the same theory.

In *Hudson Navigation Co.* vs. *Murray*, 233 Fed. Rep., 466, suit was brought to remove a cloud on the title of stock by the cancellation of other certificates which were alleged to be illegal. In that case the property of the corporation was not within the district where it was incorporated and where suit was brought. It was held that the action could not be maintained in that district, since there was no property there within the meaning of the Code. Judge Haight said (page 469):

"It is clear, therefore, that if the alleged illegal shares of stock cast a cloud upon the title to the shares belonging to the genuine stockholders, jurisdiction in a suit to remove such cloud may be acquired by this court over the defendant by the substituted service provided for in Section 57 of the Judicial Code, because the situs of the valid shares is within this district. But there is a well defined difference between the object of the suit at bar and that of the Jellenik and New Jersey cases above cited. In the latter cases it was sought to remove a cloud upon the legal title to stock, or to determine the legal title, while in the former such is not the purpose, because the illegal stock cannot cast a cloud upon the *legal title* to the genuine stock of the holders thereof. But the illegal stock probably does not cast a cloud upon the equitable title or the interest, which the genuine stockholders have,

by virtue of their shares of stock, *not in the stock*, but in the property of the corporation, since it impairs that title or interest. N. Y. & N. H. R. R. Co. vs. Schuyler, 17 N. Y., 592. However, that fact does not bring the case within the provisions of the statute in question, for the property, upon the equitable title to which the cloud rests, is not the stock, but the property of the corporation, and that, as before shown, is not within this district. The statute makes the location of the property, upon the *title* to which the cloud exists, the decisive factor."

There is nothing in *Chase* vs. *Wetzlar*, 225 U. S., 79, that in any way militates against our position. On the contrary, it sustains it. There Chase, a citizen of Pennsylvania, sued the executors of Gustave J. Wetzlar, who were alleged to be alien subjects of the Empire of Germany residing in Frankfort-on-the-Main. The testator was a citizen and resident of the State of New York at the time of his death, which occurred in 1898. His will was admitted to probate in the Surrogate's Court of New York County. Under the will his son was entitled on reaching the age of twenty-five years to receive a sixth part of the residuary estate. It was also alleged that this share was invested in railroad bonds. By the will it was stated that the executors were residents of the German Empire and express power was conferred upon them to remove the trust estate at any time from the State of New York. A plea was filed showing that no portion of the estate of the testator and no portion of the trust fund of the estate referred to in the bill whereby it was sought to reach this trust fund

"is now or has been for at least five years prior hereto, within the City, County or State of New York nor within the Southern District of New York nor within the United States, but is and has been in Germany in the possession and control of the said Emil Wetzlar there residing." The Court held that the burden of proof as to the existence of property to be affected by the decree within the jurisdiction of the Circuit Court under the statute now under consideration rested on the complainant, on the theory that as to an averment of a fact absolutely necessary to the exertion of the power of the Court to render a binding decree the duty was imposed upon the party pleading to establish the fact, and that the jurisdiction conferred by the statute rested upon a real and not an imaginary or constructive basis. Chief Justice White then proceeded to say:

> "It requires no close analysis to sustain the interpretation given by the court below to the statute, viz., that it exclusively deals with property which is within the district where a suit is brought and which property is therefore capable of being made subject to the dominion and resulting control of the court. No other interpretation is in reason possible in view of the terms of the section causing its provisions to come into play only when there is 'real or personal property within the district where such suit is brought.' * * * We think there is no basis for the contention that the section contemplates the exercise of jurisdiction by a Federal Court upon the assumption of its control over property when there is no property subject to control within the jurisdiction."

In that case, as the opinion shows, the property sought to be reached consisted of bonds. There is authority to support the distinction between a specialty such as a bond, and a promissory note. Mr. Justice Peckham, in *Buck* vs. *Beach*, 206 U. S., at page 407, says:

> "Although public securities, consisting of state bonds and bonds of municipal bodies, and circulating notes of banking institutions have sometimes been treated as property in the place where they were found, though removed from the domicile of the owner, State Tax on Foreign-held Bonds, 15 Wall., 300, 324, it has not been held in this Court that simple contract debts, though evidenced by promissory notes, can under the facts herein stated be treated as property and taxed in the state where the notes may be found."

The cases cited for the appellant do not sustain her contention. Most of them relate to taxation and arise under statutes which, as interpreted, express the intention of subjecting to the taxing power of the Federal or State governments property within the territorial jurisdiction of those governments, and which include as property within such jurisdiction instruments which are the evidence of indebtedness.

DeGanay vs. *Lederer*, 250 U. S., 376, is clearly such a case; as were also *Wheeler* vs. *Sohmer*, 233 U. S., 438. *People ex rel. Westbrook* vs. *Board of Trustees*, 48 N. Y., 390, *People ex rel. Jefferson* vs. *Smith*, 88 N. Y., 576, and *Johrer* vs. *Roscoe*, 62 Miss., 699. None of these cases contravenes the doctrine of *Wyman* vs. *Halstead*, *McIlroy* vs. *Al-*

sop, *Buck* vs. *Beach*, *Chicago*, *Rock Island and Pacific R. R. Co.* vs. *Sturm* or *Blackstone* vs. *Miller*, above discussed. In none of them was the mere physical presence of the evidence of indebtedness in the taxing jurisdiction regarded as controlling.

Thus, in *DeGanay* vs. *Lederer*, the income which was held to be subject to a tax was derived from stocks and bonds of domestic corporations and mortgages secured on domestic real estate owned by an alien non-resident held in the hands of an agent in this country who was empowered to sell, assign and transfer any of them and to invest and reinvest the proceeds as was deemed best by him in the management of the business affairs of the owner.

So in *Wheeler* vs. *Sohmer*, *supra*, the sole question to be determined was as to whether or not an inheritance tax law imposing a transfer tax on property within the State belonging to a non-resident at the time of his death was unconstitutional under the due process clause of the Fourteenth Amendment. That case was one which related to a succession tax, and was distinguished on that ground from *Buck* vs. *Beach*, *supra*, which related solely to a property tax. In the latter case it was pointed out that the notes sought to be taxed really were in Ohio hands for business purposes and were moved backward and forward between Ohio and Indiana with the intent to avoid taxation.

Although the Court was divided in opinion in *Wheeler* vs. *Sohmer*, none of the opinions rendered affords sanction to the assumption of jurisdiction of the present case by the Court below.

In *Wheeler* vs. *Sohmer*, as in *Blackstone* vs. *Miller*, in order to enforce the indebtedness on which a succession tax was levied it would have been necessary to resort to the tribunals of the taxing

State. That in and of itself constituted a sufficient justification for the laying of a succession tax on the property so situated.

As bearing on this subject the decision in *Wilcox* vs. *Ellis*, 14 Kan., 588, which was relied upon in the opinion of Mr. Justice Brewer in *New Orleans* vs. *Stempel*, 175 U. S., 309, is illuminating.

A large part of appellant's brief is confined to the discussion of the question as to whether or not a promissory note constitutes personal property. There can be no doubt but that in many respects it does, especially within the terms of taxing and other statutes which clearly intend that it shall be so considered. These decisions, however, have no application, or, if any, only a remote bearing, on the interpretation of a statute such as that on which jurisdiction depends in a case like the present. Here the act relates to a court of limited jurisdiction. It relates solely to a specified class of cases and to exceptional conditions. It is not intended to enlarge the powers of the Court generally with regard to the issuance of process into remote parts of the country. Its operation is therefore confined to the enforcement of a lien upon or claim to or the removal of an encumbrance, lien or claim upon "the title to real or personal property within the district where such suit is brought." Whereas, in a taxing law, the public interest calls for an interpretation which at least does not hamper the collection of revenue, the very nature of the act now under discussion, in the interest of justice, demands an interpretation which shall not permit a controversy arising in one part of the country to be transferred for adjudication into a district remote from that where the controvesy arose and where the subject-matter had its situs. This is par-

ticularly true where the alleged property, as for example, a promissory note which, after all, is merely an evidence of indebtedness, could be readily and surreptitiously carried from one part of the country to another and the obligation which it represents cannot as in the present case, because of his non-residence be enforced against the obligor within the district to which it has been carried.

So far as the administration of the estate of Ephraim H. Lombard is concerned, the promissory notes, which the appellant asserts to be personal property within the Southern District of New York, not only constituted obligations of persons who resided in Mississippi, were payable there and were secured by a deed of trust on property located there, but jurisdiction over those notes had been acquired by the Chancery Court of Mississippi in the probate proceedings. They continued to be under the control of that court, and were taken out of that jurisdiction by the appellant in violation of the law of Mississippi. To say, under such circumstances, that these promissory notes were personal property within the Southern District of New York within the meaning of Section 57 of the Judicial Code, would give to its language not only an inequitable, but a strained, interpretation. As between the appellant and the appellee, both of whom claim the title to these notes, the fact that the former carried them out of Mississippi into New York should not oust the State of Mississippi of jurisdiction over the controversy or confer it, by serving process on the appellee in Mississippi on the tribunal which appellant has invoked. Otherwise, on the same theory jurisdiction might with like effect have been transferred by her to England or Italy or Bulgaria had she removed the

notes to any one of those countries or to any other country having a statute similar to Section 57 of the Judicial Code. Where as here, the alleged property to which the litigation relates is capable of being transported from state to state and from country to country in one's wallet, such an interpretation would make jurisdiction ambulatory. It is safe to say that it was never intended by Section 57 or by the Act of 1875, whence it is derived to accomplish so extraordinary a result.

Nor are cases such as *Yazoo, &c. R. R. Co.* vs. *Adams*, 181 U. S., 580, *Smiley* vs. *Kansas*, 196 U. S., 447, or *Lindsley* vs. *Natural Carbon Gas Co.*, 220 U. S., 61, in any manner applicable here. They merely pronounce the familiar doctrine that this Court will adopt the interpretation given to the enactment of a State legislature by the highest court of the State. Here, we are dealing with a Federal statute.

Thompson vs. *Emmet Irrigation District*, 227 Fed. Rep., 560, was a bill in behalf of bondholders of an irrigation district, an Idaho corporation, for the purpose of enforcing the payment of interest coupons out of a fund derived from assessments on lands within the district. The action was brought in the jurisdiction where the debtor resided and the fund sought to be reached was located. There is nothing to show where the bonds to which the coupons related were kept.

Jones vs. *Rutherford*, 26 App. D. C., 114, was an action to determine the relative rights of an attorney and his client to a check about to be issued by the Treasurer of the United States. Under Section 105 of the Code of the District of Columbia it was held that the client, who was a non-resident of the District, might be brought within

the jurisdiction of the court by substituted service. The subject-matter of the action had no other situs than the District of Columbia, the matter in controversy being the right of possession of the draft as between two rival claimants, the indebtedness which was the subject-matter of the draft being that of the United States.

In the course of the opinion, after citing *Wyman* vs. *Halstead*, *supra*, *Vaughan* vs. *Northup*, 15 Pet., 1 and *United States* vs. *Cox*, 18 How., 100, Judge Morris said (page 122):

> "These are all plainly cases of rival administrations, wherein it was held that the administration at the place of death of the deceased person was the proper and paramount administration which the Treasury officials should recognize, and that in antagonism to such administration there was no room at the seat of government for a rival, or a different, administration, by reason of any supposed situs of assets in this district."

Citizens Savings & Trust Co. vs. *Illinois Central R. R. Co.*, 205 U. S., 46, related to the cancellation of deeds and leases of the property of a railroad company all of which was located in the district in which the suit was brought.

Louisville & Nashville R. R. Co. vs. *Western Union Telegraph Co.*, 234 U. S., 369, was a bill in equity to annul the judgments of courts of eminent domain in Mississippi. The land which was the subject-matter of that action was also located within the jurisdiction of the court in which the suit was brought.

So in *Greely* vs. *Lowe*, 155 U. S., 58, and *Dick* vs. *Foraker*, 155 U. S., 404, the suits related to the

title of land situated within the district where the actions were instituted.

Goodman vs. *Niblack*, 102 U. S., 556, related to the title to a fund, which was likewise located within the district whose jurisdiction was invoked.

There is nothing in *Johrer* vs. *Roscoe*, 62 Miss., 699, that affects the adjudication in *McIlroy* vs. *Alsop*, 45 Miss., 365, *supra*. The case involved the question as to whether the property of a Mississippi woman who married an Italian subject and resided in Italy until the time of her death, was to be distributed as "personal property situated in this State" (Mississippi), or pursuant to the laws of Italy. The estate consisted of moneys owing to the decedent, who had died intestate, on loans made by her agent in Mississippi, for which he took promissory notes which were kept in the State of Kentucky. Her agent took out letters of administration in Mississippi. It was held that the notes were to be regarded as personal property situated in Mississippi. The two cases are in complete harmony.

Nor does *Waldron & Co.* vs. *Yates*, 111 Miss., 631, sustain appellant's contention. The question there involved was whether a voucher for the payment of money due was subject to the lien of an enrolled judgment, as personal property, under the provisions of the Mississippi Code of 1906. It was held that it was not, thus indicating that under the law of Mississippi the term "personal property" may in one connection mean one thing and something entirely different when used in another connection.

As further bearing on this phase of the case, it is to be noted that none of the persons who are liable upon the notes described in the bill of com-

plaint is a party to this action. If a decree were rendered in this suit it would have no binding force upon the debtors (*McDonald* vs. *Mabee*, 243 U. S., 90, 91). Nor would the maintenance of the action in any way interfere with the appellee's enforcement of the promissory notes assigned to her by actions brought against the debtors in Mississippi. The decision in *McIlvoy* vs. *Alsop*, *supra*, would enable her to maintain such an action even though she did not have the physical possession of the promissory notes. Nor would such an action prevent the debtors from paying the notes to the appellee. Under the decisions she would have the right to maintain in the District of Mississippi an action similar to that brought by the appellant in the Southern District of New York, and might join the debtors in that action and obtain a judgment binding upon them. So far as the appellant is concerned, the appellee might in that action, by means of substituted service, secure a decree adjudging the title to these notes to be in her.

This in itself presents a sound reason in support of the determination which the appellant is now seeking to review, and shows the futility of an attempted assumption of jurisdiction of this action by the court below. (See *Minor on Conflict of Laws*, §121.)

Judge Knox very pertinently said, speaking of the tribunal in which he was sitting:

> "The fact that this court cannot protect the plaintiff as against any action the debtor may see fit to take, or which the defendant may take as against the debtor, would seem to determine the question as to whether or not

there is within this district any property capable of being made 'subject to the dominion and the resulting control of this court.'"

II.

Not only were these notes not personal property within the district where appellant's suit was brought, but this is not a case for the removal of a cloud upon the title to personal property within the meaning of that phrase as employed in Section 57 of the Judicial Code.

It was certainly not intended by Congress when it enacted this provision, to change the substantive law. It was merely a procedural measure. It did not purport to create a new definition of an action to remove a cloud upon title or to bring within the scope of the principle applicable to the quieting of title new causes of action.

At the time of the enactment of this Statute an action to remove a cloud upon title did not lie, especially in New York for the removal of a cloud upon the title to personal property generally. This is declared in *Smith* vs. *Mayor, &c., of the City of New York*, 68 N. Y., 552, 554. There Judge Earl said:

> "It is difficult to perceive how, upon any theory, the plaintiff can maintain this action. He seeks to have certain assessments and taxes declared illegal and void upon the ground that they are a cloud upon his title. Our attention has been called to no case where such an ac-

tion has been maintained to remove a cloud upon any title except that to real estate, and yet he claims that his pier is not real estate. If it is real estate, it is conceded that the taxes have been legally imposed. If it is not real estate, then there is no precedent in this State for the maintenance of the action. Ward vs. Dewey, 16 N. Y., 519."

In *Red Diamond Clothing Co.* vs. *Steideman*, 129 Mo. App., 519, 97 S. W. Rep., 220, the Court said:

"The first count in all the petitions is to remove a cloud upon the title of personal property in the possession of, and claimed to be the property of, the plaintiff. In State ex rel. vs. Wood, 155 Mo., 446, 18 L. R. A., 396, the court said: 'It would seem to be elementary that in legal parlance cloud upon title arises with reference to real estate only. 6 Am. & Eng. Ency. of Law (2nd ed.) 150, and cases cited. This is the settled law of this State. Lockwood vs. St. Louis, 24 Mo., 20; Leslie vs. St. Louis, 47 Mo., 474; Warrensburg vs. Miller, 77 Mo., 56; Sayre vs. Tompkins, 23 Mo., 443; Bank vs. Kansas City, 73 Mo., 555.' There are exceptions to this elementary rule of equity practice; for instance, to remove a cloud upon attached property in the hands of a sheriff, when the cloud is created by a recorded mortgage. Voss vs. Murray, 50 Ohio St., 19, 32 N. E., 1112. Assignees of property, which they desire to sell, may remove a cloud upon it created by a recorded mortgage, which they claim to be invalid. Sherman vs. Fitch, 98 Mass.,

59. In the latter case the court said: 'The mortgage is upon record, and it is evident that they (the assignees) cannot sell the property with any prospect of obtaining its fair value, because the purchaser would know that he exposes himself to an action if the defendant's claim is well founded.' The same principle of equity is announced in Magnuson vs. Clithero, 101 Wis., 551, 77 N. W., 882. Pomeroy says the action to quiet title 'may be invoked to determine conflicting rights over personal property. * * * It will be seen that each case must stand mainly upon its own circumstances.'"

See also:

Key City Gas Light Co. vs. *Mansell*, 19 Iowa, 305;

Gott vs. *Hoschna*, 57 Mich., 413, 24 N. W. Rep., 123;

Whitlock vs. *Greaves*, 48 N. J. Eq., 379, 21 Atl. Rep., 944.

In *Jones* vs. *Gould*, 149 Fed. Rep., 153, the Circuit Court of Appeals of the Sixth Circuit, consisting of Judges Lurton, Severens and Cochran, made it clear that Section 57 was not intended to apply to intangible and transitory objects. Their exposition is convincing:

"The statute contemplates that the action in which substituted service of process may be made must be one which relates to 'the title to real or personal property within the district,' language which imports a *localized subject*. Further, the action must be one to en-

force some right in it, or to remove some obstruction to the enjoyment of it. It does not concern the rights to property which is intangible and transitory, choses in action and the like, adhering to the person of the owner, who may be here today and abroad tomorrow. Such subjects are not localized, and have never been within the scope of that solicitude which the policy of the state exerts for its inhabitants and over the fixed and tangible objects of ownership within its dominion.

Again, what is the legitimate subject of the kind of action to which the statute has reference? Evidently it must be the title to some property. In strictness, the word 'title' is applicable only to real estate. But it is also sometimes used to denote a similar attribute of personal property. When so used, it has a kindred meaning, *and contemplates some specific tangible thing, having some resemblance to real property in its characteristics which justifies the borrowing of the term. It is rarely, if ever, used to denote the ownership of transitory and intangible objects.* It is singular that, although this statute has been in force for more than thirty years, there should be such a dearth of authority upon the matter of its construction. The validity of State legislation of this kind, so far as it affects titles to real estate, has been repeatedly affirmed; and no doubt is now entertained upon that subject. Arndt vs. Griggs, 134 U. S., 316, and cases which have followed it. And it may be assumed that similar legislation for the judicial control of *localized* personal property would also be sustained. But that is the ex-

tent, so far as we know, to which such legislation has been attempted. * * * The subject was discussed by Mr. Justice Brown in Greeley vs. Lowe, 155 U. S., 58, and, although nothing particularly relevant here was actually decided, the language of the learned justice seems to assume that the subject of controversy in order to justify obtaining jurisdiction by substituted service *must be a res localized within the district.*"

The case just cited was decided six years after the decision in *Jellenik vs. Huron Copper Mining Co.*, 177 U. S., 1. There the property in question was shares of stock in a Michigan corporation whose property was located in Michigan, and it therefore involved an interest in the property of the mining company.

In *Non-Magnetic Watch Co.* vs. *Association Horlogere Suisse*, 44 Fed. Rep., 6, it was held that in a suit to determine the title to a patent right, a non-resident defendant could not be served by publication under the provisions of the statute now under discussion. Judge Lacombe, in the course of his opinion, said:

"The various cases which were cited by the complainant's counsel interpreting this section are concerned either with real property, or with such tangible personal property as was susceptible of reduction to actual possession. I cannot satisfy myself that the section covers (or was intended to cover) such incorporeal and intangible property as a patent right, possession of which must of necessity be ideal, not actual, and which cannot be seized or sold

> under an execution. Stephens vs. Cady, 14 How., 528; Stevens vs. Gladding, 17 How., 447. Statutes which undertake to give to courts jurisdiction over non-residents, who do not come within the district for purposes either of residence or business, should not be enlarged by too liberal construction, and in the absence of authority I must decline to make the order prayed for."

In *Lawrence* vs. *Times Printing Co.*, 90 Fed., Rep., 24, it was held, under the same statute, that the so-called newspaper franchise of a newspaper arising out of a contract with the Associated Press and the circulation of a newspaper are not specific articles of personal property having a legal situs within the district within the meaning of this statute.

In *Wabash Railroad Co.* vs. *West Side Belt R. Co.*, 235 Fed. Rep., 645, *Jones* vs. *Gould*, *supra*, was followed, Judge Thomson saying:

> "The property in question is a chose in action, a debt owing by the West Side Belt, a citizen of this district, to the Wabash Company, a non-resident defendant. The proceeding is therefore an attempt to establish what might be called an attachment lien, or equitable charge upon the moneys in the hands of the West Side Belt Company to answer the debt of an absent defendant."

See also

> *Consolidated Mining Co.* vs. *Callahan Mining Co.*, 228 Fed. Rep., 528.

III.

Not only were the notes which are the subject-matter of this litigation not property in the Southern District of New York within the meaning of Section 57 of the Judicial Code, but the plaintiff wrongfully removed them from Mississippi, where they rightfully belong, in violation of the Statute of that State, and taking advantage of her own wrong, is seeking to bestow upon the District Court of the Southern District of New York a jurisdiction which it does not possess.

We have called attention to the statute of Mississippi which governs executors and administrators and property of a decedent which is in course of administration in the chancery courts of that State. It contains a categorical negative: "*An executor or administrator shall not remove any of the property of the estate out of this State.*" The bill of complaint shows that these notes were, when they died, the property of Eva W. and Ephraim H. Lombard, and the decrees probating their respective wills show that at the time of probate the notes were in Mississippi and were to be administered in the tribunals of that State. In spite of her duty and the prohibition of the statute, the appellant has removed the notes from the jurisdiction of Mississippi. In this aspect of the case the decision in *Cutrer* vs. *Tennessee*, 98 Miss., 849; 35 L. R. A. (N. S.), 333, 337, is illuminating. There in a case bearing a strong resemblance to the present and likewise arising in Coahoma County, Mississippi,

property located in Tennessee and being there administered was wrongfully brought into Mississippi, where the Tennessee jurisdiction was vindicated, the Court saying:

> "That no man can profit by his own wrongdoing is a maxim of the law applying as strongly to the case of an administrator leaving the jurisdiction of his proper accountability and going into a jurisdiction wherein it does not properly lie, seeking thereby to avoid accounting to the court of his appointment, as it does to any other human transaction."

Assuming, for the sake of the argument, that Eva W. Lombard had an interest in these notes which did not go to her husband as survivor, the notes being payable to them jointly, her estate is in process of administration in the jurisdiction where she lived and died, and that of Ephraim H. Lombard is likewise in process of administration there, the wills of both having been probated in the Chancery Court of Mississippi having jurisdiction, and that jurisdiction having been invoked by the plaintiff. She has never received permission to remove these notes from Mississippi, and yet having done so she seeks in a foreign jurisdiction to litigate the title to these notes as against a citizen and resident of Mississippi, whose rights are derived from an assignment executed by Ephraim H. Lombard eleven days prior to the date when he executed his will under which the plaintiff claims the title to these notes.

Having thus brought the notes unlawfully into the State of New York, they cannot be regarded as being within that district, because in and of itself

it is inconsistent with the command of the Mississippi statute to which the plaintiff has voluntarily and deliberately subjected herself. She has come into a court of equity for the purpose of litigating with respect to these notes in a jurisdiction where she could not take a single step unless the property which is the subject-matter of the suit were lawfully in that jurisdiction.

On the well-known maxim that equity regards that to be done which ought to be done, how can jurisdiction by this Court be predicated upon a state of facts running counter to this fundamental and salutary principle? Will it not be applied in such a way as to lead to a presumption that the plaintiff, by yielding obedience to the law of Mississippi, kept within its jurisdiction the property of her father's estate which belonged there? Is she to be heard to say that she disobeyed that law; that she removed from the jurisdiction of the court of chancery of Mississippi property belonging to her father's estate which was being administered by that court, and that property having its legal situs in Mississippi had gained a new situs in New York solely because she had defiantly undertaken to change that situs without the permission of the court which in the first instance had on her petition lawfully assumed jurisdiction over the *res*? Were she to be permitted to occupy a position so extraordinary as that disclosed by the undisputed facts, she would be enabled by her act, violative of the law of Mississippi, to oust the courts of that state of their jurisdiction legally assumed over property and to confer it upon a distant jurisdiction, thus taking advantage of her own wrong?

The principle of *Moran* vs. *Sturges*, 154 U. S., 256, 274 has likewise been violated by the appellant.

There is nothing clearer than that courts will not lend their aid to one whose status rests on so unconscionable a basis. Illustrations of the application of this principle are not lacking. One of the most interesting is afforded by *Riggs* vs. *Palmer*, 115 N. Y., 506.

There a beneficiary under a will, in order that he might prevent revocation of the provisions in his favor and obtain the speedy enjoyment and possession of the property, wilfully murdered the testator. Under the terms of the will the murderer would have taken the property. Under the law of descent he would likewise have taken it. Yet it was decided that, because of the crime committed by the beneficiary, the Court would not permit him to benefit out of the estate left by his victim, either as donee under the will or as heir or next of kin. It is apparent that the Court absolutely disregarded not only the terms of a valid will, but also of a statute, in order to prevent the wrongdoer from profiting by his wrong. Judge Earl, in the course of his opinion, said:

> "What could be more unreasonable than to suppose that it was the legislative intention in the general laws passed for the orderly, peaceable and just devolution of property, that they should have operation in favor of one who murdered his ancestor that he might speedily come into the possession of his estate? Such an intention is inconceivable. We need not, therefore, be much troubled by the general language contained in the laws. Besides, all

laws as well as all contracts may be controlled in their operation and effect by general, fundamental maxims of the common law. No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes. They were applied in the decision of the case of the New York Mutual Life Insurance Company vs Armstrong, 117 U. S., 591."

See also:

McDowall vs. *Sheehan*, 129 N. Y., 206, 207;
Walden vs. *City of Jamestown*, 178 N. Y., 216;
Roche vs. *Nason*, 185 N. Y., 136.

This principle has been frequently applied in cases where jurisdiction over a defendant is sought to be acquired by means of unlawful, fraudulent or inequitable acts of the plaintiff.

It was recognized in *Fitzgerald Constr. Co.* vs. *Fitzgerald*, 137 U. S., 105, where Chief Justice Fuller said:

"There was no pretense that property had been brought into the state by means of fraudulent inducement, or that the claim against the garnishee was fictitious."

In *Commercial Mutual Accident Co.* vs. *Davis*, 213 U. S., 256, Mr. Justice Day remarked:

> "It is undoubtedly true that if a person is induced by artifice or fraud to come within the jurisdiction of the Court for the purpose of procuring service of process, such fraudulent abuse of the writ will be set aside upon a proper showing."

So, in *Cavanagh* vs. *Manhattan Transit Co.*, 133 Fed. Rep., 818, process was set aside where the plaintiff's agent induced the secretary of the defendant corporation, which was a resident of New York, to come into New Jersey for an interview with reference to certain machinery purchased from the defendant, and at the close of the interview, as the secretary was leaving the place where it was held, process was served upon him. Judge Lanning, citing in support of his decision *Steiger* vs. *Bonn*, 4 Fed. Rep., 17, and *Reed* vs. *Williams*, 29 N. J. Law, 385, held that where a party on whom a summons is served is induced to come into the state by a deception practised upon him by the plaintiff for the purpose of serving the summons, the service will be set aside.

In *Olean Street Railway Co.* vs. *Fairmount Construction Co.*, 55 App. Div., 292, the service of a summons upon the president of the defendant while in the State of New York on invitation of the plaintiff's president for the purpose of adjusting a claim against the defendant, was set aside, even though plaintiff's president denied that the invitation was a trick or device for the purpose of obtaining the service, the Court holding that it would not sanction any attempt to bring a party within its jurisdiction by fraud or misrepresentation or any act savoring of *male fides*.

Among other cases decided by the courts of New York to this same effect, are:

Snelling vs. *Watrous*, 2 Paige, 314;
Carpenter vs. *Spooner*, 2 Sandf., 717;
Metcalf vs. *Clark*, 21 Barb., 45.
Beacom vs. *Rogers*, 79 Hun., 220;
Goupil vs. *Simonson*, 3 Abb. Pr., 474;
Binninghoff vs. *Oswell*, 37 How. Pr., 235;
Baker vs. *Wales*, 14 Abb. N. S., 331;
Higgins vs. *Dewey*, 27 Abb. N. C., 81.

The same rule has been applied in cases where a plaintiff brought a defendant into his jurisdiction by means of extradition or interstate rendition proceedings and then undertook to serve process upon him in a civil action, even though a third party might have sued the defendant when brought into the state by means of the extradition proceedings.

Williams vs. *Bacon*, 10 Wend., 676;
Slade vs. *Joseph*, 5 Daly, 187;
Adriance vs. *Lagrave*, 59 N. Y., 110;
In re Baruch, 41 Fed. Rep., 472.

Citations might be multiplied from other jurisdictions, but the rule is so well established that the mere statement of it suffices. A litigant cannot, by pursuing unfair methods, secure jurisdiction over a non-resident of the state whose courts are invoked. It is a fraud upon the court whose intervention is sought, it is an attempt on the part of the plaintiff to profit by his own wrong, and the administration of justice would be seriously impugned were it possible to set a court in motion by an act which in itself is a violation of law.

If the plaintiff has a cause of action she has an ample remedy in the jurisdiction where the defendant resides, where those indebted upon these promissory notes reside, and where the estate to which these notes belong is being administered by the duly constituted tribunals of that jurisdiction. Disregarding, however, these outstanding facts, the plaintiff has sought by trick and device and by a violation of the law of Mississippi, to create a fictitious jurisdiction. Were she to succeed in this effort then one tortiously coming into possession of personal property in Massachusetts might carry it to Arizona and there institute a *quia-timet* action with respect to the property, conferring jurisdiction over the eloigned property on the Arizona court by constructive service on the Massachusetts owner.

IV.

The plaintiff's case is entirely devoid of equity, because she has not come into court with clean hands.

This appears not only from the facts which have been considered under Point II, but also from the concessions contained in the bill of complaint that the very will on which she predicates her alleged title to these notes was executed by her father at a time when he was not mentally competent to make a will. The allegations of the complaint and the facts relative to the probate of the will are fully set forth in the Statement of Facts. How, then, is it possible for any court, and especially a court of equity, to listen to a complainant who is seeking relief which is in its essential nature equit-

able, when by her own statement she shows that her alleged cause of action is founded on a will executed by an incompetent testator?

Here, again, an elementary principle comes into operation, that he who comes into equity must come with clean hands. We content ourselves by calling attention to the following authorities:

1 *Pomeroy's Eq. Jur.*, §404;
Brotzman's Appeal, 119 Pa. St. 645;
Gilmore vs. *Thomas*, 252 Mo. 147, 158 S. W. Rep., 577;
Primeau vs. *Granfield*, 193 Fed. Rep., 911;
Danciger vs. *Stone*, 187 Fed. Rep., 853;
Memphis Keeley Institute vs. *Leslie E. Keeley Co.*, 155 Fed. Rep., 964;
Class vs. *Strack*, 85 N. J. Eq., 319, 96 Atl. Rep., 405, 407;
Pearson vs. *Murray*, 230 Mo., 162, 130 S. W. Rep., 21;
Sinsheimer vs. *United Garment Workers*, 77 Hun, 215;
Comstock vs. *Johnson*, 46 N. Y., 221;
McMullen vs. *Hoffman*, 174 U. S., 639, 656.

V.

The judgment appealed from should be affirmed.

LOUIS MARSHALL,
JAMES MARSHALL,
Appearing specially for the Appellee.

JUSTICE CLARKE dissent.

CRICHTON *v.* WINGFIELD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 312. Submitted December 16, 1921.—Decided February 27, 1922.

1. As a basis for service upon an absent defendant under Jud. Code, § 57, personal property must be properly localized within the district of suit. P. 74.
2. Promissory notes, secured on land in Mississippi and payable there, were claimed by C as legatee, under wills of the payees of which she had been made executrix by a Mississippi probate court which had found, upon her representations, that the deceased were

citizens of that State and that the personal property bequeathed was located within its jurisdiction. Before qualifying as executrix, C removed the notes to New York, of which she was a citizen, and there, while the probate proceedings were pending, brought suit in a federal court to quiet her title to them against a citizen of Mississippi who claimed under assignment from one of the decedents. *Held* that the notes had not such a status as personal property in New York as would justify foreign service under Jud. Code, § 57.

Affirmed.

DIRECT appeal from a judgment of the District Court quashing a service of process and dismissing the bill of the appellant, for want of jurisdiction.

Mr. John W. Cutrer and *Mr. Thomas B. Felder* for appellant.

The statute uses words of ordinary meaning. The term " personal property " was designed to mean what it means in the several States, where the exercise of the jurisdiction might be sought. It includes all personal property of all kinds. At any rate, it embraces securities like the mortgage or deed of trust involved in this case, with the accompanying negotiable obligations described therein. *De Ganay* v. *Lederer*, 250 U. S. 376. In New York, the appellant's residence, the term embraces such securities. New York General Construction Law, 1919, c. 27, §39. So in Mississippi, Code 1906, §1591.

This recognition by the statutes of both States indicates that the common-law notion that pecuniary obligations like these are the evidence only of a debt, has passed away in both States, as it has in many others where similar statutes have been enacted. *Wheeler* v. *Sohmer*, 233 U. S. 434; *Jellenik* v. *Huron Copper Mining Co.*, 177 U. S. 1; *Matter of Bronson*, 150 N. Y. 1; *Westbrook* v. *Board of Trustees*, 48 N. Y. 390; *Jefferson* v. *Smith*, 88 N. Y. 576. Any reasonable doubt would be resolved in favor of the construction of the state statute which has been adopted by the court of last resort of the State.

Yazoo & Mississippi Valley R. R. Co. v. *Adams*, 181 U. S. 580.

New York, like Mississippi, has also recognized these obligations as personal property by permitting their attachment, their replevin, and their sale under execution, all irrespective of the domicile of the maker or holder. They are, also, in both States, declared to be personal property for the purpose of conferring jurisdiction upon a Surrogate's Court. *Johrer* v. *Roscoe*, 62 Miss. 699; *Walden & Co.* v. *Yates*, 111 Miss. 631. See also *Blackstone* v. *Miller*, 188 U. S. 189; *New Orleans* v. *Stempel*, 175 U. S. 309; *Fishburn* v. *Londershausen*, 50 Ore. 363.

The question whether securities like these come within the definition of "personal property" under this statute, has several times been before the federal courts, and jurisdiction has been maintained. *Manning* v. *Berdan*, 132 Fed. 382; *Pensacola State Bank* v. *Thornberry*, 226 Fed. 611; *Thompson* v. *Emmett Irrigation District*, 227 Fed. 560; *Hodgman* v. *Atlantic Refining Co.*, 274 Fed. 104; *Jones* v. *Rutherford*, 26 App. D. C. 114.

This court, in *Chase* v. *Wetzlar*, 225 U. S. 79, refused to consider bonds as constructively in the State of New York where executors, appointed in New York, had taken them to Germany. The actual presence of the securities within the jurisdiction is essential to the maintenance of an action to cancel liens thereon, or to remove clouds from the title. *Cocke* v. *Brewer*, 68 Miss. 775. Distinguishing *McIlvoy* v. *Alsop*, 45 Miss. 365. See also 3 Beale Conflict of Laws, p. 507.

The action is not personal but *in rem*. *Ampro Mining Co.* v. *Fidelity Trust Co.*, 76 N. J. Eq. 555, 557; *N. Y. & N. H. R. R. Co.* v. *Schuyler*, 17 N. Y. 592.

Under § 57, Jud. Code, a cloud on the title to personal property was removed in *Thompson* v. *Emmett Irrigation District*, 227 Fed. 560. Similar relief was granted in *Citizens' Savings & Trust Co.* v. *Illinois Central R. R. Co.*, 205

U. S. 46. See *Louisville & Nashville R. R. Co.* v. *Western Union Telegraph Co.*, 234 U. S. 369; *Freeman* v. *Alderson*, 119 U. S. 185; *Arndt* v. *Griggs*, 134 U. S. 316; *Hamilton* v. *Brown*, 161 U. S. 256; *Wilson* v. *Graham*, 30 Fed. Cas. No. 17804.

Distinguishing *McDonald* v. *Mabee*, 243 U. S. 90; *Chase* v. *Wetzlar*, 225 U. S. 88.

In this proceeding we are not resolving an obligation into its ultimate solution by payment, through the processes of a court. The opinion of the court below places its adverse decision on that assumption.

Mr. Louis Marshall and *Mr. James Marshall* for appellee.

No property was located in the Southern District of New York, within the meaning of § 57, Jud. Code, which affords a basis for the exercise of jurisdiction by the District Court, with respect thereto, as against the appellee, as resident and citizen of Mississippi, who was not found or served with process in that district and who did not voluntarily appear therein.

This is not a case for the removal of a cloud upon the title to personal property within the meaning of that phrase as employed in § 57.

The plaintiff wrongfully removed the notes from Mississippi, where they rightfully belong, in violation of the statute of that State, and taking advantage of her own wrong, is seeking to bestow upon the District Court of the Southern District of New York a jurisdiction which it does not possess.

The plaintiff's case is entirely devoid of equity, because she has not come into court with clean hands.

Mr. Justice Day delivered the opinion of the court.

Appellant, a citizen of the State of New York and a resident of the southern district thereof, brought this suit

in the District Court of the United States against the appellee, a citizen of the State of Mississippi, residing in the City of Clarksdale, County of Coahoma in that State. Appellant is the daughter of Ephraim H. and Eva W. Lombard, appellee is a sister of Ephraim H. Lombard. From the bill it appears that a controversy arose concerning the ownership of certain notes, fourteen in number, executed by W. D. Corley at Clarksdale, Mississippi, on January 1, 1917, and made payable to Eva W. and E. H. Lombard or bearer at the Bank of Clarksdale, Clarksdale, Mississippi. Seven of the notes were for $31,480 each, and seven were interest notes given for sums aggregating $39,664.80. The bill alleges that these notes were held in the State of New York within the jurisdiction of the District Court. From the bill it appears that appellant claims to own the notes by bequests under the wills of Eva W. and E. H. Lombard, respectively.

The complaint sets forth that E. H. Lombard when in feeble health executed a certain paper assigning one-half of all the principal notes, numbered from four to nine inclusive, and one-half of the interest notes, numbered from four to nine inclusive, to the appellee. The notes are alleged to be deferred payments on the sale of a plantation in the State of Mississippi. It is set out that at the time of the alleged assignment to appellee E. H. Lombard was of unsound mind, memory and understanding, and incapable of executing the assignment; that the same was obtained by the appellee by undue influence exercised upon appellant's father, and that it was without consideration. The assignment is alleged to constitute a cloud upon appellant's title to the notes in controversy. The notes are secured by deeds of trust upon real estate conveyed in Mississippi, which are duly recorded in the record of mortgages and trust deeds in that State.

The appellee could not be served with process in the Southern District of New York, and an order was made

under § 57 of the Judicial Code for service. Service was made upon the appellee at Clarksdale, Mississippi. She thereupon made special appearance for the purpose of a motion to quash the service upon the ground that she is a resident, citizen and inhabitant of the State of Mississippi and had not been within the New York District; and she moved for a dismissal of the bill. Upon hearing the District Court sustained the motion, set aside the service, and dismissed the bill.

The question here only concerns the jurisdiction of the District Court. There is much controversy in the record, embodied in affidavits, as to the manner in which possession of the notes was obtained by the appellant, and the assignment made to the appellee. So far as we deem them necessary to be considered, the facts are: The notes are secured by deeds of trust on lands in Mississippi. It appears without contradiction that Eva W. Lombard, the mother, died May 25, 1919. Upon petition of appellant the will was admitted to probate and she was appointed and qualified as executrix in the Chancery Court of Mississippi. The decree in the Chancery Court finds that the last will and testament was fully and legally established as the last will of Eva W. Lombard, who at the time of her death was a resident of Coahoma County, Mississippi; that the lands devised by the will are situated in Bronxville, New York, and that the personal property bequeathed by the will is all located in the second district of Coahoma County, Mississippi, the place of residence of the deceased at the time of her death. It was before the qualification of appellant as executrix under her mother's will that she took the notes to New York.

After the death of her father, which occurred in New York after the death of the mother, appellant filed a petition in the Chancery Court of Mississippi, and a decree was entered upon her petition, establishing the last will and testament of her father. In that decree there are

findings like those establishing the will of her mother, namely, that her father was at the time of his death a resident of Coahoma County, Mississippi; that the personal property bequeathed and devised by the will is located in the second district of Coahoma County, Mississippi, the place of residence of decedent at the time of his death. The decree established the last will and testament of E. H. Lombard, admitted the same to probate, and appointed the appellant executrix.

It further appears that neither of the estates had been settled in the Chancery Court of Mississippi, the court of probate, and as to both administration was pending when this suit was brought. From these recitals it appears that by the decrees of probate, invoked and obtained by the appellant, it was found that the decedents had been and were residents of Coahoma County, Mississippi, and that the personal property bequeathed under each will was located in the second district of that county, and hence subject to the jurisdiction of the court of probate.

By a law of Mississippi, set forth in the record (§ 2102, Code of Mississippi), it is provided: that an executor or administrator shall not remove any of the property of the estate out of the State; and the court is authorized, when it appears that the property is about to be removed, to issue a precept to the sheriff commanding him to seize the same and hold it until legally disposed of, and the letters of such executor or administrator may be revoked, on due notice, and administration *de bonis non* granted to some other person, and suit may be instituted by creditors or distributees of the estate on the bond, and judgment rendered accordingly.

With these facts beyond dispute, did § 57 of the Judicial Code authorize service in Mississippi to call upon the respondent to answer in the District Court in New York where the notes were physically held, and there litigate the controversy which had arisen concerning them?

66. Opinion of the Court.

Section 57 provides:

"When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same State, such suit may be brought in either district in said State . . ."

The purpose of this section is to authorize service of process in suits to remove clouds upon title, liens, and incumbrances, upon property within the district by bringing in adverse claimants who cannot be reached by the ordinary methods of personal service. The language used is primarily applicable to titles to realty. It is true that the statute also embraces personal property. Used in this connection, personal property undoubtedly refers to such as is lawfully localized within the district, and there held and enjoyed, and thus made subject to the court's jurisdiction to clear its title from clouds and liens, notwithstanding personal service within the district cannot be obtained upon those setting up adverse interests. It is the presence of property real or personal within the district which confers the limited jurisdiction conferred in § 57 upon the District Court. *Chase* v. *Wetzlar*, 225 U. S. 79.

This court had occasion to consider the statute in *Jellenik* v. *Huron Copper Mining Co.*, 177 U. S. 1, where it was held in a suit involving title to shares of stock, that foreign service might be obtained in the Circuit Court of the United States for the District of Michigan on adverse claimants to bring in certain alleged owners of shares of stock held by Massachusetts defendants. This was held to be so because the company was organized under the laws of Michigan whose statutes declared that the stock of the company was to be deemed to be personal property. For the purpose of the suit it was decided that the property was within the State of Michigan, as the habitation or domicile of the company was within that State, which created the corporation, and made the property subject to its laws.

The appellant insists that the principles declared in that case control here, and cites statutes of New York and Mississippi defining personal property in terms broad enough to include written instruments creating pecuniary

obligations. The appellant also relies upon cases decided in this court such as *Wheeler* v. *Sohmer*, 233 U. S. 434, in which it was held that the New York inheritance tax imposed upon the transfer of property within the State, belonging to a non-resident thereof, was not void under the due process clause of the Federal Constitution as applied to promissory notes held in a non-resident's safety deposit box in New York. In discussing the character of such property we held that the State might tax such notes as property having a local situs within its borders. In *De Ganay* v. *Lederer*, 250 U. S. 376, this court sustained a federal tax upon the income from stock, bonds and mortgages owned by alien non-residents, but in the hands of an agent in this country, with full authority over them. In that case, as in the *Wheeler Case*, the previous decisions in this court were cited, which have held that notes, bonds, and mortgages may acquire a situs at a place other than the domicile of the owner, and be reached and taxed as localized property by the taxing authority.

We have no disposition to depart from the principle of those cases, but are of opinion that they do not control the present controversy. In our view § 57 of the Judicial Code cannot, under the facts of this case, be made the basis of a departure from statutory enactments which require personal service within the district in order to subject a person to the jurisdiction of a federal court.

In this cause the appellant derives her title, as she sets forth in her bill, from the bequests made to her by her father and mother which, subject to the settlement of the estates, would give her title to the notes in controversy. Upon her petition she was appointed executrix of the wills. Upon her representation as to residence of decedents she obtained letters testamentary in each of the estates. The decree of probate declared the personal property to be within the jurisdiction of the Mississippi court. A statute of the State forbade its removal beyond the

borders of the State. These estates at the time the bill was filed remained open and unsettled. Under such circumstances it would be doing violence to the purpose and provisions of § 57 to hold that the mere physical presence of the notes in New York, complainant having seen fit to take them there, made them personal property of that localized character lawfully within the Southern District of New York which would justify foreign service upon a non-resident and bring him or her to the local jurisdiction to contest title to the notes.

While the District Court put its decision upon different grounds, we are of opinion that it rightly held that a case for foreign service was not made out, and did not err in setting aside the service, and dismissing the bill.

Affirmed.

MR. JUSTICE PITNEY concurs in the result.